

**HEARING ON MODERNIZING CUSTOMS  
POLICIES TO PROTECT AMERICAN WORKERS  
AND SUPPLY CHAINS**

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**HEARING**  
**BEFORE THE**  
**COMMITTEE ON WAYS AND MEANS**  
**U.S. HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED EIGHTEENTH CONGRESS**  
**FIRST SESSION**

\_\_\_\_\_  
MAY 25, 2023  
\_\_\_\_\_

Printed for the use of the Committee on Ways and Means

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United States House Committee on  
**Ways & Means**  
**CHAIRMAN JASON SMITH**

FOR IMMEDIATE RELEASE  
May 18, 2023  
No. TR-02

CONTACT: 202-225-3625

**Chairman Jason Smith and Trade Subcommittee Chairman Adrian Smith  
Announce Subcommittee Hearing on Modernizing Customs Policies to Protect  
American Workers and Secure Supply Chains**

House Committee on Ways and Means Chairman Jason Smith (MO-08) and Trade Subcommittee Chairman Adrian Smith (NE-03) announced today that the Subcommittee on Trade will hold a hearing on updating trade laws and procedures related to U.S. Customs and Border Protection in order to ensure the agency serves the interest of American workers. The hearing will take place on **Thursday, May 25, 2023, at 9:00AM in 1100 Longworth House Office Building.**

Members of the public may view the hearing via live webcast available at <https://waysandmeans.house.gov>. The webcast will not be available until the hearing starts.

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record can do so here: [WMSubmission@mail.house.gov](mailto:WMSubmission@mail.house.gov).

Please ATTACH your submission as a Microsoft Word document in compliance with the formatting requirements listed below, **by the close of business on Thursday, June 8, 2023**. For questions, or if you encounter technical problems, please call (202) 225-3625.

## **FORMATTING REQUIREMENTS:**

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission but reserves the right to format it according to guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Please indicate the title of the hearing as the subject line in your submission. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

## **ACCOMMODATIONS:**

The Committee seeks to make its facilities accessible to persons with disabilities. If you require accommodations, please call 202-225-3625 or request via email to [WMSubmission@mail.house.gov](mailto:WMSubmission@mail.house.gov) in advance of the event (four business days' notice is requested). Questions regarding accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

**Note:** All Committee advisories and news releases are available on the Committee website at <http://www.waysandmeans.house.gov/>.

###

MODERNIZING CUSTOMS POLICIES  
TO PROTECT AMERICAN WORKERS  
AND SECURE SUPPLY CHAINS

Thursday, May 25, 2023

House of Representatives,

Subcommittee on Trade,

Committee on Ways and Means,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:00 a.m., in Room 1100, Longworth House Office Building, Hon. Adrian Smith [chairman of the subcommittee] presiding.

Chairman Smith of Nebraska. The subcommittee will come to order.

Good morning. Thank you, Ranking Member Blumenauer, and to all of our witnesses as well and members for being here today.

Today's subcommittee hearing is an important step as the House Ways and Means Committee considers updates to custom laws to ensure Customs and Border Protection has the right policies in place to enforce our laws effectively, facilitate legitimate trade, and provide clarity to the private sector.

Congress has periodically made meaningful updates to customs laws; however, it has been 30 years since our last comprehensive overhaul. In the three decades since, we have seen the emergence of e-commerce; major supply chain challenges, many of which stemmed from a global pandemic; changes in consumer behavior; and the rise of China as a much larger player in global trade. Congress must do more to secure our key supply chains, modernize how and with whom we trade, and hold China accountable for its abusive trade practices.

I am eager for this committee to lead a thoughtful process to consider updates that reflect our current reality, and we are off to a strong start. Earlier this month, the full committee held a hearing, a field hearing, at the Port in Staten Island, New York, to better understand challenges Americans face moving goods through ports every day.

As part of our continued effort, we must also examine how best to give law enforcement the tools needed to stop illicit products like fentanyl from entering the U.S. Likewise, we must take steps to prevent products made with forced labor from entering the U.S., all while supporting American jobs and improving American competitiveness. I am convinced we can advance a bipartisan legislative product that minimizes unnecessary red tape when importing and exporting; addresses supply chain bottlenecks while holding China accountable; and stops illegal, often dangerous, products from crossing our borders.

Both CBP and private sector partners play pivotal roles in targeting bad actors abroad. Last year, Congress appropriated \$100 million for CBP to enforce the Uyghur Forced Labor Prevention Act. These increased resources must lead to fair and effective enforcement and improved clarity on what information CBP requires to determine a supply chain is free of forced labor. This subcommittee will continue to provide robust oversight on this front.

Recently, there have been substantial discussions about de minimus policies and how to ensure they function as intended. It is always appropriate to review our policies and consider whether updates are needed. As Trade Subcommittee chair, I am committed to ensuring this conversation considers both the benefits and challenges of de minimus in the world today.

I must also express my deep concern about the White House's repeated attempts to exclude Congress from key trade actions. This approach to trade only emboldens China, while ignoring the wishes of the American people. While multiple administrations have pushed the envelope by seeking to advance trade negotiations through executive agreements rather than seeking approval from Congress, the Biden administration has vastly overstepped its authority.

Most recently, this administration has taken unprecedented action to redefine what a free trade agreement is for, and I quote, critical mineral agreements, end quote. These agreements do nothing to create U.S. jobs or reduce our reliance on China. There has been growing bipartisan recognition that Congress must assert our constitutional authority over international trade, and I am pleased to work with Ranking Member Blumenauer and other colleagues on this important issue.

I look forward to working with my colleagues to examine all sides of complex customs issues. Our work must result in policies that make the U.S. as competitive as



possible by improving trade enforcement and expanding opportunities for American workers, both in the near and long term.

With that, I am pleased to recognize the ranking member from Oregon, Mr. Blumenauer, for his opening statement.

Mr. Blumenauer. Thank you very much, Mr. Chairman. And there are a number of things that you outlined there that I think we can and should work on in a cooperative basis, particularly the role of Congress in dealing with trade policy.

I want to thank our witnesses for joining us today. I have been looking forward to this conversation, even though we are going to maybe be running back and forth a little bit from the floor.

This hearing follows a similar hearing we had just a few weeks ago in Staten Island on the topic of securing supply chains and protecting the American worker. We heard compelling testimony about the presence of forced labor in our supply chains, the pernicious role of the de minimus loophole, and the impact of unfair trade practices on American workers and business. And I am looking forward to hearing our witnesses elaborate on some of these points.

I am proud of what the great subcommittee Democrats came up with in terms of proposals to accomplish the objectives laid out in that hearing. I hope we can move from talking about it to having further action to achieve our shared goals.

Last Congress, House Democrats led efforts to pass the America COMPETES Act, to support America's workers and combat China's unfair trade practices. That legislation strengthens American trade laws, closes the de minimus loophole, and invests in American workers. I am sorry we were unable to pull those across the finish line. I hope that in working together, we can identify areas to deal with these challenges, maintaining Americans' competitiveness.

I, as you know, have had particular interest in the de minimus loophole. It has allowed imports from China to flood the American market, evade oversight and duties at the border, and undercut American companies that play by the rules. More than 2 million packages a day now enter the United States under de minimus. The vast majority of those

shipments originate from China.

I appreciated Chairman Jason Smith's comments at the field hearing in Staten Island noting that de minimus is like a free trade agreement for China. We must be bold in closing this loophole that puts American jobs in danger and creates an open for trade in illicit products. Many of these de minimus shipments contain textiles, apparel, a source highly exposed to forced labor by the Uyghur people in Xinjiang, China. The de minimus loophole can allow evasion of our trade laws that prohibit importation of goods made with forced labor, including the Uyghur Forced Labor Prevention Act.

President Biden and Ways and Means Democrats have championed the enforcement of trade laws, including the Forced Labor Prevention Act, because we believe the fruits of modern-day slavery have no place in supply chains of any product anywhere.

I am concerned that my colleagues across the aisle are pursuing policies that would undermine the Enforcement Trade Act to the detriment of American workers, the Republican proposal to slash the budgets of the Federal Government that administer and enforce trade laws that protect American industries and workers by as much as 22 percent. At a time when U.S. Customs and Border Protection faces unprecedented trade enforcement workloads, we should be investing more, not less, in the investment of our trade laws.

I look forward to working with CBP and making sure the agency has the resources it needs to properly administer American de minimus laws and any reforms we may come up with.

I strongly urge my colleagues to come forward with meaningful trading proposals to ensure U.S. workers, farmers, and businesses have the tools to compete in the global economy.

U.S. Customs and Border Protection has embarked on an endeavor to update our

customs laws to meet today's framework through the 21st Century Customs Framework. The agency has worked closely with industry stakeholders to come up with legislative proposals to reform customs laws. Unfortunately, some of those ideas we have heard about would actually weaken trade enforcement.

For that reason, I have worked with Mr. Doggett to urge CBP to oppose an industry proposal to shield vehicle manifest data from public disclosure. As we wrote in our letter, civil society organizations rely on this data to assist CBP with enforcing U.S. prohibition on the import of labor, for example, made with forced labor in the Uyghur Forced Labor Prevention Act. We should consider how we can make more information available to increase transparency in supply chains. This committee has watched this in terms of illegal trade in animals and illegal logging. We should not hide this critical information.

Mr. Chairman, I would like to enter into the record what Mr. Doggett and I had generated on this issue.

Chairman Smith of Nebraska. Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**Congress of the United States**  
Washington, DC 20515

November 14, 2022

The Honorable Chris Magnus  
Commissioner of U.S. Customs and Border Protection  
1300 Pennsylvania Ave. NW  
Washington, DC 20229

Dear Commissioner Magnus,

We write in strong opposition to the recent proposal submitted to the U.S. Customs and Border Protection (CBP) by your Commercial Customs Operations Advisory Committee (COAC) which calls for ending public disclosure of import data for goods that arrive on our shores via ocean transport.

The public availability of such data is crucial for the enforcement trade agreements, such as those that protect American workers from competing with goods manufactured with forced labor. Currently key import data from goods arriving via air, road or rail is not subject to public disclosure. However, federal law (19 U.S.C § 1431) provides for the public disclosure of key information from vessel manifests. Ocean-going freight is responsible for approximately half of the imported goods entering the United States in a given year, and as such transparency into goods arriving via marine traffic is indispensable in tracing and monitoring forced labor risks in supply chains.

Investigative work by journalists and other members of civil society relying upon the public disclosure of such trade data has been critical in assisting your agency's enforcement of Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307), which prohibits importing any product that was mined, produced, or manufactured wholly or in part by forced labor, in addition to the Uyghur Forced Labor Prevention Act. Additionally, public transparency of maritime trade data has greatly facilitated Congress' authority under Article 1 Section 8 of the U.S. Constitution to oversee and regulate commerce with foreign nations. Ending public disclosure of this trade information would impede congressional oversight over foreign commerce and significantly impair CBP's capacity to ensure goods that arrive on our shores are not produced by forced labor.

Moreover, removing from public disclosure import data from shipping manifests stands in stark contrast to the stated goals of your 21<sup>st</sup> Century Customs Framework (21CCF). [As your agency says](#), "the complexities of the modern supply chain have made it increasingly difficult to identify and deter violative behavior . . . reform is needed in order to protect American workers and business [and] ensure fair competition . . ." First among your goals for the 21CCF is achieving supply chain transparency, as "Improved visibility into global supply chains will strengthen CBP's ability to root out violative actors, supporting ethical production methods and leveling the playing field for domestic industry." We concur, and call upon CBP-to adhere to this 21CCF goal to increase and not lessen supply chain transparency.

**Congress of the United States**  
Washington, DC 20515

The COAC's proposal would obscure public visibility into key trade data, in contravention of clear congressional intent, and inhibit the identification of supply chains that rely upon unfree labor and the exploitation of workers abroad. We urge CBP to reject COAC's proposal and continue to take a strong stand against initiatives that would permit the prevalence of coerced labor.

Thank you for your attention to this matter. We look forward to receiving your response.

Sincerely,



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Lloyd Doggett  
Member of Congress



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Earl Blumenauer  
Member of Congress  
Chairman, Subcommittee on  
Trade



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Brendan F. Boyle  
Member of Congress



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André Carson  
Member of Congress



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David N. Cicilline  
Member of Congress



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Rosa L. DeLauro  
Member of Congress



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Debbie Dingell  
Member of Congress



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Dwight Evans  
Member of Congress

Congress of the United States  
Washington, DC 20515



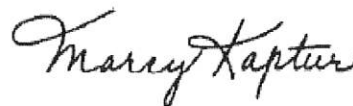
Jesús G. "Chuy" García  
Member of Congress



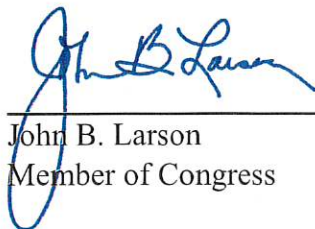
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Member of Congress



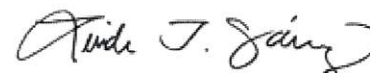
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Ilhan Omar  
Member of Congress




Jimmy Panetta  
Member of Congress




Linda T. Sánchez  
Member of Congress




Congress of the United States  
Washington, DC 20515

  
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Thomas R. Suozzi  
Member of Congress

  
Mike Thompson  
Member of Congress

  
Juan Vargas  
Member of Congress



Mr. Blumenauer. Thank you very much.

I look forward to hearing from our witnesses on these issues as we consider proposals to update the customs laws and procedures, and hope that Congress facilitates that, not makes it harder.

I appreciate, Mr. Chairman, this hearing, and look forward to working with you on areas of common interest and perhaps analyzing areas where we might find development as some common ground.

Chairman Smith of Nebraska. Very good. Thank you, Mr. Blumenauer.

I will now introduce our witnesses.

Brenda Smith is the global director of government outreach for Expeditors International and is the former executive assistant commissioner at CBP. Next, we have Michael Kanko, the CEO of ImportGenius. Next is Fred Ferguson, the vice president of public affairs for Vista Outdoor. Michael Stumo is CEO for Coalition for a Prosperous America. Finally, Martina Vandenberg, founder and president of Human Trafficking Legal Center.

Thank you to all of our witnesses for taking your time and sharing your expertise here today. I will remind all of you that your written statement will become part of the record.

And, Ms. Smith, I recognize you now for 5 minutes.

**STATEMENT OF MS. BRENDA SMITH, GLOBAL DIRECTOR OF  
GOVERNMENT OUTREACH, EXPEDITORS INTERNATIONAL**

Ms. Smith. Mr. Chairman, Ranking Member Blumenauer, members of the committee, thank you for the chance to testify before you today.

My name is Brenda Smith, and I currently work as the global director of

government outreach for Expeditors International of Washington, a global logistics, freight forwarding, and information company. Previously, I served for 7 years as the executive assistant commissioner for trade at U.S. Customs and Border Protection. The views I express today are my own and do not necessarily reflect the position of my current or past employers.

The pandemic laid bare the weaknesses in the global system that moves goods from farmers and manufacturers to consumers. In the 40 years that I have worked in this arena, the volume of global trade has multiplied 32 times what it was in the mid-1980s. This staggering growth has been accompanied by an overlay of new trade agreements, expanded supply chain parties, and increased customer expectations.

Customs administrations have also evolved over those 40 years, mostly in response to border security challenges, leaving many trade modernization efforts unfinished.

In my work on the U.S. Single Window, I learned the importance of developing a clear vision and then translating this vision into legal, operational, and technology frameworks. My own statement of principles underlying a vision for customs modernization would include the following points:

First, leveraging trusted trader investment to share risk information and truly streamline entry and compliance procedures by all U.S. Government regulatory agencies. Make the "green lane" a reality across all types of shipments and trade processes. This approach should extend to expansion and full implementation of AEO mutual recognition agreements.

Second, truly digitizing all agency requirements for supply chains, including a continued commitment to the U.S. Single Window and a full rationalization of data requirements to minimize redundancy and focus on collecting only the most important data at the right time from the right party. More data isn't always better. Quality is more

important than quantity.

Third, planning and practicing a response to supply chain disruption across all government agencies and the supply chain partners. Resiliency will be greater if potential regulatory and operational flexibilities are determined in advance and recognize the lower risk associated with trusted traders.

And, finally, a single process across all agencies with requirements for good crossing borders, to include the alignment of regulations, operational processes, and trusted trader programs, and a commitment to using the U.S. Single Window for the collection of all data.

So, what will it take to implement this vision? There are many things that could be included, but I would like to highlight two specific areas. First, the investment in Customs personnel and technology; and second, collaboration with stakeholders.

First, implementation will require ongoing investment in the softer parts of Customs infrastructure, specifically expertise and technology. Aside from significant investment in forced labor capabilities, the level of CBP's nonuniformed trade personnel has not materially increased since CBP was established in 2003. In addition to ensuring that there are enough specialists to handle the growth in trade and complexity, these individuals need to be well trained in both modern business practice and traditional Customs competencies, with a dedicated Trade and Cargo Academy and regularly updated curriculum.

Investment in technology will support data collection and analysis for enforcement and facilitation and must prioritize the continued modernization of the automated commercial environment.

The second key requirement for modernization is collaboration with stakeholders. At CBP, I worked extensively with numerous partners and valued forums that allowed for

frank discussion and consensus building. Expanding private sector engagement with the partner government agencies through the Border Interagency Executive Council and driving active regulatory, operational, and technology coordination through forums like the COAC, the Trade Support Network, and the BIEC would result in better problem solving and an environment that meets the needs of both government and the private sector.

I thank this committee for the opportunity to advocate for customs modernization. Much work remains to be done, but I strongly believe it is work worth pursuing as we support opportunities for businesses and consumers as they engage in the global marketplace.

[The statement of Ms. Smith follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**House Ways and Means Committee**  
**Trade Subcommittee Hearing on**  
**Modernizing Customs Policies to Protect American Workers and Secure Supply Chains**  
**May 25, 2023**

**Statement of Brenda B. Smith**  
**Global Director, Government Outreach**  
**Expeditors International of Washington, Inc.**

Mr. Chairman, Congressman Blumenauer, and Members of the Subcommittee:

Thank you for the chance to testify before you today. My name is Brenda Smith and I currently work as the Global Director of Government Outreach for Expeditors International of Washington, Inc., a global logistics, freight forwarding, and information company. Previously, I served for seven years as the Executive Assistant Commissioner for Trade at US Customs and Border Protection, during my thirty-five-year career with the federal government. The views that I express today are my own and do not necessarily reflect the official policy or position of my current or past employers.

I would like to highlight four areas of opportunity for Customs modernization, that will support both better trade facilitation and stronger trade enforcement:

- Leveraging trusted traders to manage risk
- Digitization and Single Windows
- Supply Chain Resilience and
- Coordination of government agencies operating at the border

### **Context**

The global pandemic laid bare the weaknesses and gaps in the complex, global system that transports goods from farmers and manufacturers to consumers. In the forty years that I have worked with trade issues, the volume of global imports and exports has grown from \$854 billion in 1984 to a record-breaking \$32 trillion last year. This staggering growth has been accompanied by an overlay of new trade agreements, expanded parties in the supply chain, and increased consumer expectations.

### **Challenge**

Customs administrations have evolved significantly over those same forty years, but mostly in response to significant border security challenges. This security-driven evolution has often left trade modernization efforts at the 75% completion stage, thereby missing the chance to deliver critical benefits for both private and public sectors. Incomplete modernization efforts have resulted in:

- Paper or .PDF documents remaining part of government processes
- Multiple systems needed for document/data submission, even where Single Windows exist
- Few purpose-built processes or bespoke physical infrastructures that allow for frictionless, low-risk trade

- Little recognition of Authorized Economic Operator status outside a “home” country and
- Poor regulatory and operational coordination between Customs and other government agencies

## Action

In my work on the U.S. Single Window, I learned the importance of having a clear vision for the effort and then translating this vision into the relevant legal, operational, and technology frameworks. My own “statement of principles” underlying a vision for Customs Modernization would include these provisions:

First, leveraging trusted trader investment to share risk information and truly streamline entry and compliance procedures by all government agencies. Make a “Green Lane” a reality across all types of shipments and all trade processes. This approach should extend to expansion and full implementation of AEO Mutual Recognition Agreements.

Second, digitizing all government agency requirements for supply chains, to include a continued commitment to the US Single Window and a full review and rationalization of data requirements to minimize redundancy and focus on collecting only the most important data at the right time from the right party. More data isn’t always better; quality is more important than quantity.

Third, planning and practicing a response to supply chain disruptions across all government agencies and their supply chain partners. Further, resiliency will be greater if potential regulatory and operational flexibilities are determined in advance and recognize the lower risk associated with trusted traders.

Fourth, and finally, a single process across all agencies with requirements for goods crossing borders, to include alignment of regulatory requirements, operational processes, trusted trader programs, and commitment to using the Single Window for the collection of all data or documents.

Most of these concepts are not new . . . and this Committee gave guidance in these areas during the passage of the Trade Facilitation and Trade Enforcement Act. However, meaningful change takes time and investment and requires that all stakeholders involved prove the value, get feedback, and then iterate. If we capitalize on the opportunities that still exist in these areas, US businesses would be more competitive, US consumers would benefit, and US government agencies would be more successful in enforcement of laws that protect US consumers and businesses.

What will it take to implement this vision? There are many things that should be included, but I would like to highlight two specific areas: (1) investment in Customs personnel and technology; and (2) collaboration with stakeholders.

First, implementation will require ongoing investment in “softer” parts of Customs infrastructure, specifically expertise and technology. Customs needs sufficient trade personnel to enforce trade rules, but also needs the bandwidth to create and implement new approaches for facilitation and enforcement. Aside from tremendous investment in forced labor capabilities, the level of CBP’s non-uniformed trade personnel has not materially increased since CBP was established in 2003, nor has it been able to successfully transition to a modern Global Trade Specialist position. In addition to ensuring that there is enough personnel to handle the growth in trade and complexity, these personnel need to be well trained and expert in both modern business practices and in traditional competencies such as classification, valuation, and Customs enforcement, with a dedicated Trade and Cargo Academy and regularly updated curriculum

Investment in technology is also an integral part of developing a common Customs process and makes it possible to support the data collection, transmission, and analysis around compliance with common rules. Technology investment must prioritize the continued modernization of the Automated Commercial Environment. Today's emerging technologies can help supply chain visibility and a targeted risk management approach that facilitates trade, improved revenue collection, compliance, and security in ways not possible even five years ago.

The second key requirement for modernization is collaboration with stakeholders. During my tenure at CBP, I worked extensively with the trade community in the Commercial Operations Advisory Committee, the Trade Support Network (TSN), trade associations, and with individual companies. I valued interagency forums like the Border Interagency Executive Council (BIEC), which allowed frank discussion and consensus-building between agencies. Expanding private sector engagement with the Partner Government Agencies through the BIEC and driving more active regulatory, operational, and technology coordination through forums like COAC, the TSN and the BIEC would result in better problem solving and a trade environment that meets the needs of both government and the private sector.

## **Results**

Multinational traders face the challenge of meeting compliance and service obligations while managing the cost required to deliver value to the market. Global security concerns, economic uncertainty, and varying Customs and other government agency processes represent real business challenges. Trade can be a tremendous engine of economic growth – more so if the pieces and parts of the trade process are aligned. These processes and the expertise, technology and collaboration that underpins them must keep up with the pace of change happening in the global economy. When private and public participants work together, the outcome should lead to predictability and consistency, improved compliance and security, better revenue collection, reduced supply chain costs, and improved performance overall.

## **Conclusion**

Modernization efforts should begin with a shared vision which should include four key elements:

- Leveraging trusted traders to manage risk
- Digitization and Single Windows
- Supply Chain Resilience and
- Coordination of government agencies operating at the border

We should then use a staged approach, developed through private and public sector collaboration, to develop and implement the legal framework, operational approach, and automation. This will enable the trade community and government alike to take full advantage of the opportunities of modernization and to validate over time that the government's trade processes have been simplified and that inefficiencies or variables that were previously manual and subjective are not exacerbated through automation. We must review and test the policy, regulations, process, and technology at each stage in a controlled manner across regions and government agencies to assess whether the new technology is an improvement.

I thank this committee for the opportunity to advocate for customs modernization. Much work remains to be done, but I strongly believe that it is work worth pursuing, as we support opportunities for businesses and consumers as they engage in the global marketplace.

Chairman Smith of Nebraska. Thank you.

Mr. Kanko, you are recognized for 5 minutes.

**STATEMENT OF MR. MICHAEL KANKO, CEO, IMPORTGENIUS**

Mr. Kanko. Chairman Smith, Ranking Member Blumenauer, and members of the subcommittee, thank you for the opportunity to testify today.

My name is Michael Kanko, and I am the CEO and founder of ImportGenius, a leading provider of supply chain intelligence to the global trade community. We transform raw shipping manifest data from U.S. Customs into usable information for the trade community and the general public.

Since 2007, ImportGenius has helped make the global supply chain more efficient and more transparent by making shipment records from 17 countries, including the United States, easily searchable and user friendly. This data includes shipping details such as the name of the importer, the name of the overseas exporter, a description of the products, the port of entry, the ocean carrier, and the shipment dates.

Our platform helps companies improve their supply chains and global competitiveness while aiding regulatory compliance. We help government facilitate trade, stimulate commercial activity, and enforce trade laws. And we help investigative journalists and NGOs uncover forced labor, and keep consumers safe from counterfeit goods, and save lives from deadly illicit drugs like fentanyl.

As Congress considers customs modernization and Customs and Border Protection continues its work through the 21st Century Customs Framework, I urge you to increase supply chain transparency by requiring the publication of air data.

Today I want to share a few examples that demonstrate why this change is so



important.

The ImportGenius platform has uncovered forced labor from China in the supply chain of products like laptops, refrigerators, rubber gloves, and even human hair. We have even helped law enforcement identify drugs smuggled into the country in shipments of bananas. Earlier this year, we helped identify imports of weapons and body armor from China to Russia used to support their war effort. And earlier this month, our platform helped journalists track Russian sanctions violations related to shipments of aircraft parts and gold.

These examples represent only a fraction of the overwhelming evidence that makes one thing clear: We all benefit from robust supply chain transparency.

But, unfortunately, CBP currently only publishes maritime shipping data. Manifests for cargo arriving by air or by land remain in the dark, despite air and truck cargo representing 43 percent of U.S. import value. By failing to publish air and land data, we are missing nearly half the picture, including many important and high-value products such as pharmaceuticals which are shipped by air.

Earlier this year, Bloomberg News reported on the deaths of 20 children in Uzbekistan related to tainted cough syrup that was manufactured in India. ImportGenius trade data from India's government was used to track air shipments of the tainted products to Uzbekistan. Additional shipments bound for other countries were discovered on our platform, and this critical information was related to the World Health Organization to help prevent further deaths.

Increased transparency can literally save lives, but the current visibility gap in U.S. air shipping data makes it harder to keep American consumers safe. This gap is also impacting our ability to stop Chinese forced labor. Many of the goods sourced from China that appear on the U.S. Government's list of goods produced by child labor or forced

labor are typically shipped by air.

American companies are trying to clean up their supply chains. Expanding transparency to air cargo will give them the insights they need to do that important work.

ImportGenius also cares about privacy. Personal information sometimes gets mixed into commercial trade data, and that is why, in addition to increased transparency requirements, we also support the bipartisan Moving Americans Privacy Prevention [sic] Act which recently passed the Senate by unanimous consent. This bill will help address those concerns.

I will close by reminding the committee that supply chain transparency is the number one goal of the 21st Century Customs Framework. Public disclosure of air data would help stop human rights abuses in China and around the world, save lives from fentanyl, and dramatically improve our understanding of global trade. ImportGenius urges Congress to advance legislation requiring the publication of air data on the exact same terms that CBP publishes maritime trade data today.

Thank you, and I look forward to your questions.

[The statement of Mr. Kanko follows:]

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WRITTEN TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON WAYS AND MEANS  
TRADE SUBCOMMITTEE

HEARING ON  
MODERNIZING CUSTOMS POLICIES  
TO PROTECT AMERICAN WORKERS  
AND SECURE SUPPLY CHAINS

Michael Kanko,  
CEO & Co-Founder,  
ImportGenius

May 25, 2023

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Chairman Smith, Ranking Member Blumenauer, and Members of the subcommittee, thank you for the opportunity to testify today. My name is Michael Kanko, and I am the CEO and co-founder of ImportGenius, a leading provider of supply chain intelligence to the global trade community.

Essentially, what ImportGenius does is make shipment records of imports and exports easily accessible and user-friendly, allowing users to understand the flow of goods around the world. This includes import and export data from 17 countries, but the data we started with, and which remains the most important today, is the publicly disclosed manifest data for the United States. This data includes important details about each waterborne commercial shipment coming into and exiting the United States—details such as the companies involved in the transaction, a description of the products and quantities in the shipment, the port of entry, the ocean carrier and vessel identity, and the departure and arrival dates.

Since 2007, ImportGenius has helped make the global supply chain more efficient and more transparent. Our customers include: (1) companies that use this data to evaluate and improve their supply chains and aid their regulatory compliance – nearly one out of five companies in the Fortune 500 have used our platform; (2) government agencies seeking to facilitate and stimulate commercial activity and enforce trade compliance; (3) academic institutions, individual market researchers, and trade policy thought leaders; and (4) investigative journalists and non-

governmental organizations working to keep consumers safe from counterfeit goods, stop forced labor, and save lives from deadly illicit drugs like fentanyl. Our data has been used as evidence in legal proceedings around the world. The diversity of our clients and the ways they use trade data show that supply chain transparency is both a commercial and a public benefit.

As Congress considers customs modernization legislation and U.S. Customs and Border Protection (CBP) continues its comprehensive effort to meet the demands of the modern global trade environment through the 21st Century Customs Framework, I urge you to consider ways to increase supply chain transparency for the benefit of American consumers and corporate stakeholders and to protect people around the world from human rights abuses.

Today, I would like to highlight a few examples of ImportGenius' work to demonstrate how supply chain transparency benefits American consumers, workers, and the public at large. The ImportGenius platform has helped law enforcement identify [banana shipments](#) containing smuggled drugs; uncovered forced labor from the Xinjiang region of China in the supply chain of products like [laptops](#), [refrigerators](#), [rubber gloves](#), and even [human hair](#). Earlier this year, we helped [identify](#) Chinese imports to a Russian body armor manufacturer with links to the Russian national guard and law enforcement. And earlier this month, our data platform helped journalists track Russian sanctions violations related to shipments of [aircraft parts](#) and [gold](#). During the initial days of the COVID-19 pandemic, we used maritime manifest data from container ships entering U.S. ports to better understand the supplies of critical products such as N95 masks and culture swabs for COVID-19 testing. All these efforts were thanks to the use of currently available shipment manifest data.

These examples are merely a fraction of the overwhelming evidence that makes one thing clear: we all benefit from robust supply chain transparency.

That is not a recent revelation. Even before America's founding, shipping manifests were published in port town newspapers. Currently, CBP publishes raw daily maritime data. ImportGenius uses this important CBP file combined with other layers of data to serve our customers. Unfortunately, manifests for commercial cargo arriving by air or land remain in the dark. These shipments escape transparency because the law only requires public disclosure of cargo arriving by ship. While most U.S. imports arrive by sea, that is only true when measuring by weight. Air and truck cargo currently [represents](#) 46.5 percent of U.S. import value, surpassing the nearly 43 percent arriving by maritime transport. By failing to publish air and land data, we are missing half the picture, including many high-value products.

One example is pharmaceutical products. Earlier this year, Bloomberg News [reported](#) on the deaths of 20 children in Uzbekistan related to tainted cough syrup according to tests by the Uzbek government. ImportGenius used trade data from India to track air shipments to other countries of potentially tainted batches that were then reported to the World Health Organization to help prevent other children from taking the potentially toxic medicine. In cases like this, transparency can literally save lives. Since pharmaceuticals are often shipped by air, this level of vigilance is not possible with the U.S. data available today. We should not be relying on data from other countries to keep American consumers safe. There is no reason to continue this dangerous gap in U.S. trade data transparency.

In addition to unsafe products, investigative journalists and other members of civil society rely on CBP trade data to uncover the use of slave labor around the globe. That work is critical in assisting CBP's enforcement of Section 307 of the Tariff Act of 1930, which prohibits importing any product that was mined, produced, or manufactured wholly or in part by forced labor. In 2012, the ImportGenius platform helped [uncover](#) American imports of seafood produced with slave labor. Subsequent investigations by the Associated Press were instrumental in the end of the consumptive demand exception in the Tariff Act, a loophole that allowed the importation of goods produced with forced labor if the "consumptive demand" for those goods in the United States exceeded domestic production. In 2015, Congress closed the loophole with bipartisan support by passing the Trade Facilitation and Trade Enforcement Act. The Associated Press reporting was also [recognized](#) with the Pulitzer Prize for Public Service in 2016. One of the journalists on the Pulitzer-winning team called ImportGenius one of her "favorite tools" for digging into supply chains.

In 2021, Congress again strengthened the law to prevent American support for the Chinese Communist Party's human rights violations by passing the Uyghur Forced Labor Prevention Act (UFLPA). The bill passed the House with overwhelming bipartisan support, 428 to 1. The UFLPA created a rebuttable presumption that goods produced in the Xinjiang Uyghur Autonomous Region of the People's Republic of China violate Section 307 of the Tariff Act. I am encouraged by this effort to remove forced labor from all supply chains, the Administration's efforts to implement the law, including the launch of the UFLPA Statistics Dashboard in March, and recent congressional oversight efforts from this committee, the Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, and others. Unfortunately, the current lack of air cargo transparency is undermining these efforts.

ImportGenius data has helped uncover forced labor in the supply chain of various products, but more would be possible with visibility into air shipments. Many of the products—such as laptops and lithium batteries—appear on the Bureau of International Labor Affairs List of Goods

Produced by Child Labor or Forced Labor because of their links to forced labor in Xinjiang are typically shipped by air. Moreover, the law puts the onus on importers to monitor their own supply chains, but this means importers need access to information to help them do this. Our data was used to connect the dots in an investigation that tied shipments to the United States of human hair to forced labor camps in Xinjiang unbeknownst to the U.S. importers. Expanding manifest data transparency to air would significantly aid government enforcement, but it would also help companies clean up their supply chains proactively.

Our customers are using CBP trade data to help them comply with the law and to vet their suppliers. You could compare the insights we offer our clients to the information credit reporting agencies provide to lenders. But ImportGenius provides data tools that go well beyond a credit score. We offer rich historical records that help American companies understand their supply chains and make risk-based decisions about their suppliers. The current blind spot for air imports prevents American companies from seeing connections that are necessary to make the most informed decisions. This transparency gap exposes American companies to unnecessary risk.

More transparent trade data will also help us improve America's response to emergencies. Take for example our work to track the supply of swabs and personal protective equipment during the COVID-19 pandemic. Unfortunately, when the crisis hit, we saw maritime shipments of swabs and N-95 masks plummet. That was in part because the urgency of the moment shifted imports from maritime to air, and we lost the visibility of those shipments. In times of crisis, key supplies are almost universally shipped via air freight. Expanding transparency to include air cargo manifests will improve our response to future emergencies.

The law has not kept pace with the reality of how goods are transported across borders. Updated disclosure rules requiring CBP to disclose air data are long overdue.

It is important for the Committee to know that we were close to having this data available if not for a technical drafting error nearly thirty years ago. In 1996, Congress passed the Anticounterfeiting Consumer Protection Act (ACPA) which aimed to improve enforcement and aid seizure of counterfeit goods. Section 11 of the ACPA amended the Tariff Act of 1930 to permit the public disclosure of aircraft manifests under the same terms as maritime vessel shipments. The Senate report accompanying the legislation noted that the change "eliminates the unwarranted and out-of-date distinction between information required about goods shipped by sea as compared to goods shipped by air." <sup>[1]</sup> Unfortunately, that change is not reflected in the law today.

Just three months after the ACPA was enacted, Congress passed the Miscellaneous Trade and Technical Corrections Act of 1996, which resulted in a confusing repetition of the word “vessel” in the statute. Today, Section 1431(c)(1) reads: “Except as provided in subparagraph (2), the following information, when contained in a vessel vessel [sic] or aircraft manifest, shall be available for public disclosure.” Courts have interpreted the section to limit CBP’s required publication of maritime data. This is disappointing as greater disclosure of manifest data is an invaluable tool in identifying counterfeit merchandise and the location of those counterfeiters as the ACPA intended. Today, companies continue to miss unauthorized shipments of counterfeit goods because of the failure to clearly eliminate what was seen as an “unwarranted and out-of-date distinction” nearly thirty years ago.

This Congress has the opportunity to greatly expand transparency but should also be mindful of privacy concerns. Earlier this month, the Senate passed by unanimous consent the bipartisan Moving Americans Privacy Prevention Act (S. 758), introduced by Senators Steve Daines (R-MT), Gary Peters (D-MI), Roger Marshall (R-KS), and Debbie Stabenow (D-MI). This bill would help reduce the risk that personal information, such as Social Security and passport numbers, would be inadvertently disclosed amongst commercial trade data. ImportGenius supports this and other nuanced efforts to protect individuals’ privacy while simultaneously expanding the availability of commercial trade data arriving by air and land.

In closing, improving the public disclosure of import data for air and land manifests supports the stated goals of the 21st Century Customs Framework (21CCF). In CBP’s own [words](#), “the complexities of the modern supply chain have made it increasingly difficult to identify and deter violative behavior...reform is needed in order to protect American workers and business [and] ensure fair competition...” First among the agency’s goals for the 21CCF is achieving supply chain transparency, as “Improved visibility into global supply chains will strengthen CBP’s ability to root out violative actors, supporting ethical production methods and leveling the playing field for domestic industry.” ImportGenius agrees and urges Congress to require CBP to adhere to the goal of increased supply chain transparency.

I am encouraged by what I have heard from both Republican and Democratic Members of the House and Senate about their interest in a broad effort to modernize our customs laws. Any such effort must include air manifest data transparency. But I do not think we need to wait for such an ambitious effort to make this right. There is no reason to wait any longer to correct and clarify what Congress knew was an “unwarranted and out-of-date” distinction between maritime and other modes of transport nearly thirty years ago. I respectfully ask this committee to bring forward legislation to require the publication of air data on the same terms that CBP publishes maritime data today. Pairing this critical legislation with Senators Daines’ and Peters’ proposal to

protect the privacy of personal shipments from disclosure would dramatically improve our understanding of global trade and human rights abuses by the Chinese Communist Party and other bad actors around the world.

Whether it be a pandemic, war, transnational criminal organizations, or forced labor, customs data can provide greater awareness and inform decision-making for the private sector, NGOs, and government stakeholders. ImportGenius encourages Congress to increase required transparency of customs manifest data, especially for air cargo. ImportGenius stands ready to serve as a resource to each of your offices and the committee as it continues this critical work. Thank you, and I look forward to your questions.

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<sup>[1]</sup> S. REP. NO. [104-177](#), at 11 (1996).



Chairman Smith of Nebraska. Thank you.

Mr. Ferguson, you are recognized for 5 minutes.

**STATEMENT OF MR. FRED FERGUSON, VP OF PUBLIC AFFAIRS, VISTA  
OUTDOOR**

Mr. Ferguson. Good morning, Chairman Smith, Ranking Member Blumenauer, and members of the subcommittee.

My name is Fred Ferguson, and I serve as vice president of public affairs and communications for Vista Outdoor. I am grateful for the chance to testify.

Vista Outdoor is a leading designer, manufacturer, and marketer of outdoor recreation products. Vista Outdoor is comprised of 41 iconic brands, including Bell Helmets, CamelBak, Fox Racing, Simms Fishing, QuietKat, and many, many more. We are headquartered in Anoka, Minnesota, and employ more than 6,000 people across 16 States and Puerto Rico.

We are a mission-driven company founded on the belief that when we do well, we can do good. This mindset drives our business actions. Over the past 3 years, we have invested more than \$1 billion acquiring new outdoor companies. We have a robust compliance program, and we have dedicated funding to conservation and public lands access through the Vista Outdoor Foundation.

We appreciate the subcommittee for holding today's hearing.

Despite the surge of consumer demand for outdoor gear during the pandemic, our industry is not immune to today's larger macroeconomic challenges. Combined with foreign online sellers and distributors who enjoy a significant competitive advantage in direct-to-consumer sales, the status quo is challenging on many fronts.

My testimony will focus on three critical issues that require congressional leadership. Number one, providing parity to U.S. foreign trade zones; number two, renewal of GSP; and number three, updating the Competitive Needs Limit provision within GSP.

We operate within an FTZ in Rantoul, Illinois. Here we manufacture children's bicycle helmets and distribute a variety of other bicycle products, including tire pumps, safety lights, and more. Over the last 3 years, we produced over 7 million helmets in our U.S. FTZ, employing over 100 manufacturing personnel.

Our FTZ is not utilized to its fullest potential. The lack of parity for U.S. FTZs on the issue of de minimus entry prevents us from expanding direct-to-consumer distribution in Rantoul and many of our other U.S. locations. FTZs are not eligible for de minimus entry because of the interpretation of a single word from a 1930's era statute. This means we are losing ground to competitors who enjoy up to 60 percent in duty and tax savings by foreign online sellers or companies in Mexico, Canada, or other foreign locations.

Congress obviously didn't intend to exclude FTZs from e-commerce benefits. The current statute was written decades before the invention of the personal computer.

FTZs have other benefits, especially in the context of illicit imports from China. Concentrating DTC distribution across our country's networks of FTZs can support CBP efforts to enforce trade laws, protect IP, and promote safety.

U.S. FTZs are some of the most highly regulated entities in the country. Allowing de minimus entry for products withdrawn from U.S. FTZs is a ready-made solution to secure supply chains and promote American jobs. By contrast, CBP has no oversight of the foreign warehouses where de minimus shipments currently originate and where no Americans are employed.

There are 197 U.S. FTZs located within all 50 States. They employ over 480,000

Americans and should be used as a tool to better manage shipments coming into the United States.

Lastly, we have seen de minimus used to skirt excise tax payments on certain fishing and archery equipment. This shortchanges conservation programs and disadvantages companies who play by the rules.

Congress should also pass a full retroactive renewal of GSP. GSP incentivizes U.S. companies to diversify their supply chains away from China, while boosting the economies of developing countries who otherwise may fall under the influence of other global adversaries. Congressional inaction has contributed to inflation, costing U.S. companies over \$2.5 billion and consumers even more at the retail level.

Congress should also update the Competitive Needs Limit provision within GSP. Inflation has driven up the cost of production and triggered certain CNL thresholds for many products. Artificially low CNL thresholds cut countries off just as they are starting to build domestic industries capable of competing with China.

Thank you for the opportunity to participate in today's hearing.

In summary, parity for FTZs, renewal of GSP, and updates to CNLs would create certainty and give U.S. companies confidence to invest in domestic operation, strengthen supply chains, diversify, and feel confident that U.S. policy will not fundamentally shift as the political winds change.

Thank you.

[The statement of Mr. Ferguson follows:]

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**United States House of Representatives Subcommittee on Trade**

**Testimony from Fred C. Ferguson, VP, Public Affairs and Communications, Vista Outdoor**

**Modernizing Customs Policies to Protect American Workers and Secure Supply Chains**

**May 25, 2023**

**9:00 a.m. ET in room 1100 of the Longworth House Office Building**

Good morning, Chairman Smith, Ranking Member Blumenauer and members of the Subcommittee. My name is Fred Ferguson and I serve as Vice President of Public Affairs and Communications for Vista Outdoor. I am grateful for the chance to appear before you today.

Vista Outdoor (NYSE: VSTO) is a leading designer, manufacturer and marketer of outdoor recreation products. Headquartered in Anoka, Minnesota; we employ more than 6,000 people across 16 states and Puerto Rico. While Vista Outdoor is not a household name, I am confident you are familiar with our 41 iconic brands, such as Bell Helmets, CamelBak, Camp Chef, Giro, Foresight Sports, Fox Racing, Simms Fishing, QuietKat e-bikes and many more.

We are a mission-driven company founded on the belief that when we do well, we can do good. This means we actively advocate for policies and participate in community and corporate efforts to expand recreational opportunities and bring more people outside.

This mindset drives our business actions: over the past three years we've invested more than \$1 billion acquiring new outdoor companies and have dedicated funding to conservation and public lands access through The Vista Outdoor Foundation. Each of our 41 brands are also committed and actively work to help the communities where they are based in a variety of ways.

**Challenging Environment**

We appreciate the Subcommittee for holding today's hearing – it could not be better timed. Despite the surge of consumer demand for outdoor gear during the COVID-19 pandemic, our industry is not immune to today's larger macroeconomic challenges. High inflation and rising interest rates are pressuring the nation's financial system and hitting low to middle-America consumers, resulting in less discretionary spending, especially for things like outdoor products. Combined with competition with foreign online sellers and distributors that enjoy a significant competitive advantage over U.S. companies in direct-to-consumer sales – the status quo is challenging on many fronts. Our company - and the entire outdoor industry for that matter - is at a critical tipping point and needs Congressional leadership to put in place the necessary tools to combat these challenges.

The Subcommittee's decision to hold this hearing today shows your commitment toward finding sensible but meaningful solutions to secure supply chains and support domestic jobs.

My testimony will focus on three critical issues that require Congressional leadership:

- (1) Providing parity to U.S. Foreign Trade Zones, or "FTZs;"
- (2) Renewal of the Generalize System of Preferences (GSP) Program; and lastly,
- (3) Updating the Competitive Needs Limit (CNL) provision within GSP.

### **Support for US FTZs**

Vista Outdoor operates within an FTZ in Rantoul, Illinois. Here we manufacture children's bicycle helmets and distribute a variety of other bicycle products, including but not limited to, adult bicycle helmets, tire pumps, safety lights and mirrors. Over the last three years, we produced over 7 million bicycle helmets in our U.S. FTZ employing over 100 manufacturing jobs.

More recently, the volume of e-commerce sales has rapidly risen as more consumers shop online, which means e-commerce is now a significant part of our overall business strategy. Originally, our FTZ in Rantoul – and the conversion of other sites into FTZs – was slotted to be a plank in this strategy, but the structure of existing trade law under Section 321 of the Tariff Act of 1930 eliminates much of the potential benefits and required us to scale back our FTZ strategy.

FTZs are not eligible for de minimis entry because of the interpretation of a single word from a statute implemented decades before the invention of the personal computer. There obviously was no explicit congressional intent to exclude FTZs from e-commerce benefits when the law was written in 1930.

Like many others in our industry, we can no longer afford to watch our competitors enjoy up to 60% in duty and tax savings by foreign online sellers or companies using 3PL's in Mexico and Canada to fulfill e-commerce orders and utilize de minimis.

We do not believe Congress intentionally meant to exclude U.S. FTZs from e-commerce benefits when the law was last updated in 2015, as they would have explicitly precluded their coverage. Which means the inequity we are facing is an unintended consequence that is actively incentivizing American companies to move e-commerce fulfillment operations to foreign countries. This is the exact opposite of supply chain security and domestic job creation.

FTZs can support CBP efforts to enforce trade laws, protect IP and promote safety. Approximately two million packages are entering the United States every day under de minimis entry. The challenge CBP faces to process this growing volume in addition to ensuring the contents of each shipment is legitimate and abides by all federal health, safety and forced labor regulations is seemingly unimaginable.

Allowing de minimis entry for products withdrawn from U.S. FTZs would help lessen CBP's burden, as U.S. FTZ operations are strictly regulated by CBP and fully under their jurisdiction, at all times. Moreover, FTZ operators must be approved by the Department of Commerce before they are able to be active. By stark contrast, CBP has no oversight or authority of the foreign warehouses where de minimis shipments currently originate.

One additional, and not widely talked about unintended consequence of the increased volume of de minimis shipments, is the declining collection of excise taxes. De minimis enables importers to skirt excise tax payments on the importation of fishing and archery equipment. This shortchanges conservation programs and disadvantages companies who play by the rules.

We urge Congress to create parity for FTZs and de minimis.

### *301 Tariffs*

Our U.S. FTZ is also harmed by the 301 tariffs.

Some of the component parts we use to build over 3 million kids bicycle helmets are subject to additional duties under the 301 tariffs, resulting in a significant increase in production costs. This defeats the primary reason we activated our U.S. FTZ, which was to correct an inverted tariff. The normal duty rate for finished helmets is zero, or DUTY-FREE. But normal duty rates for helmet components range from 2.5% -7%. Producing in an U.S. FTZ corrects this problem by waiving the duties of the materials by substantially transforming them into a new article of commerce. However, the application of Section 301 tariffs eliminates this benefit and nullifies the incentive to produce children's bicycle helmets in the U.S.

We strongly believe components, parts and finished helmets should be excluded from the 301 tariffs so that our trade policy aligns with our shared desire to promote safety for children and others who are riding their bikes.

### **Reauthorize GSP**

Congress should pass a full retroactive renewal of the Generalized System of Preferences (GSP). GSP incentivizes U.S. companies to diversify their supply chains away from China, and simultaneously boosts the economic development of developing countries that otherwise may fall under the influence or spheres of other global adversaries.

GSP expired on December 31, 2020, and Congressional inaction has cost US companies over \$2.5 billion, which translates into ~2-3x added markups for consumers at the retail level.

We urge Congress to pass a full retroactive renewal of GSP.

### **Competitive Needs Limits**

Congress should also update the Competitive Needs Limit (CNL) provision within GSP. These are artificial thresholds set under the program, which, if a certain import from a certain country surpasses these thresholds, that product is removed from the GSP program. Inflation has driven up the cost of production and triggered certain CNL thresholds for many products. The dollar threshold, that rises by only \$5 million per year, has failed to keep up with rocketing inflation, while the percentage threshold, set at 50% of total U.S. imports, penalizes countries that have unique or domestic growth products not available in sufficient volume elsewhere. Artificially low CNL thresholds cut countries off just as they are starting to build domestic industries capable of competing with China.

We urge Congress to update CNL thresholds to account for inflation and ensure that GSP countries, such as Indonesia, do not lose access to GSP.

### **Closing**

Thank you for the opportunity to participate in today's hearing. Taken together, each of the topics I discussed would create certainty and give U.S. companies confidence to invest in domestic operations, strengthen their supply chains, diversify away from China and feel confident that U.S. policy today will not fundamentally shift as the political winds change. The current environment creates uncertainty and prevents domestic firms from investing in people and new products here in the United States.

We urge the Subcommittee to bring parity to de minimis and FTZs, renew GSP, update the competitive needs limits under GSP and bring certainty and finality to the 301 tariff debate.

Thank you.

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Chairman Smith of Nebraska. Thank you.

Mr. Stumo, you are recognized for 5 minutes.

**STATEMENT OF MR. MICHAEL STUMO, CHIEF EXECUTIVE OFFICER,  
COALITION FOR A PROSPEROUS AMERICA**

Mr. Stumo. Chairman Smith, Ranking Member Blumenauer, members of this committee, it is an honor to testify here today.

My name is Michael Stumo. I am the CEO of the Coalition for a Prosperous America. CPA is proud to be the leading national bipartisan organization representing exclusively domestic producers and workers across many industries and sectors of the U.S. economy.

De minimus, also known as the Amazon loophole, is a serious flaw in customs law that allows over 2 million packages per day to enter the U.S. without meaningful inspection, tariffs, country of origin information, or HTS codes. Historically, it was a very minor exception. Today, shippers that use de minimus have little or no knowledge of what is in the box. The practical effect is to authorize every foreign vendor on planet Earth completely outside our jurisdiction the ability to sell directly to American households without any liability.

Chairman Jason Smith rightly said de minimus is essentially a free trade agreement with China. Allowing China to exploit de minimus is, in fact, unilateral disarmament of our customs and trade laws. It is another way that China is exploiting U.S. law to further their geopolitical and military rise, while making us weaker by sacrificing American manufacturers and workers.

Thankfully, there is bipartisan agreement that this must be fixed. Ranking



Member Blumenauer led the way with an important bill last year that effectively excludes China from exploiting the de minimus loophole. Many organizations endorsed it, including mine. Several Republican Senators supported it. A Morning Consult poll revealed that an overwhelming 81 percent majority of voters support Congress addressing the de minimus loophole. Former Trade Ambassador Lighthizer said last week that Congress must get rid of de minimus because it supports China and hurts us. Simply lowering it to \$200 will do nothing to fix the problem.

De minimus is directly harming our CPA members. It undercuts textile producer Parkdale Mills in North Carolina, one of our members and the biggest buyer of U.S. cotton. That is because Shein now sells billions in clothing directly to U.S. consumers while avoiding our forced labor bans and section 301 tariffs.

De minimus hurts CPA member Liberty Tabletop in New York, the only American-made stainless steel silverware manufacturer. That is because Amazon and Temu help Chinese flatware makers sell their products made with subsidized stainless steel and avoid 301 tariffs.

De minimus hurts CPA member Kent Bikes in New Jersey and South Carolina, the largest manufacturer of U.S. bikes. That is because Chinese bikes, some with exploding batteries, are shipped individually, avoiding tariffs, avoiding safety inspections that are required of U.S. producers.

The de minimus loophole is ungovernable lawlessness. CBP itself warned last March that the overwhelming volume of small packages and lack of actionable data impacts CBP's ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, and other contraband.

Over 62 percent of shipments originate in China or Hong Kong. That does not

include the Chinese goods moving through Mexican and Canadian warehouses that are shipped here. Counterfeit goods are rampant, with more than 90 percent of seizures coming from international mail and express couriers. The vast majority of seizures are from China.

According to official trade figures, China exported roughly 532 billion last year in the U.S., which, by the way, is more than the next five Chinese export markets combined. The value of de minimus shipments is not included because CBP has no idea what the number is. Our CPA economics team, however, estimates that de minimus imports from China hit nearly 188 billion last year.

Incredibly, logistic companies in Canada and Mexico actively market our de minimus as a loophole that their vendors should exploit, but Canada does not include -- allow incoming de minimus shipments from any countries, except the U.S. and Mexico, and none through their Postal Service. The EU has an effective de minimus level of zero. China is 8 bucks.

The de minimus loophole has built e-commerce giants Shein and Temu. They are now the most downloaded apps in the U.S. Amazon and its army of Chinese sellers bulldoze through the loophole more every year.

CBP tried to figure out a way to get control of pilot programs to collect some data. My written testimony cites CBP's acknowledgment that the results show those efforts have failed.

Congress should end the de minimus exception or, at a minimum, ban China from using it as a weapon against our domestic producers and American workers.

Thank you.

[The statement of Mr. Stumo follows:]

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**Written Testimony of Michael Stumo,  
CEO of the Coalition for a Prosperous America**

**Before the House Ways & Means Subcommittee on Trade  
“Modernizing Customs Policies to Protect American Workers and Secure Supply Chains”  
May 25, 2023**

Dear Members of the Committee:

It is an honor to testify before the Committee on issues that are critical to millions of U.S. domestic producers and the American workers they employ, including members of our organization, the Coalition for a Prosperous America (CPA). CPA is proud to be the only national organization representing exclusively domestic producers across many sectors. We are a bipartisan coalition of manufacturers, farmers, ranchers, and labor organizations that make and grow things in the United States. American jobs, strength, and well-being are built and sustained by growing America’s productive capacity. We value quality employment, national security, and domestic self-sufficiency over cheap consumption. As the Members of this Committee know particularly well, U.S. trade laws and regulations, and the Executive Branch’s enforcement of those laws and regulations, are critical to American manufacturers, producers, and workers.

**Introduction**

In Fiscal Year 2022, U.S. Customs and Border Protection (CBP) processed more than \$3.35 trillion worth of imported goods, an astonishing increase of 19.5% over the prior year.<sup>1</sup> However, \$3.35 trillion is an undercounting of imports. Unfortunately, not even CBP knows the total value. That’s due entirely to de minimis. De minimis is one of the three types of “consumption entry”, a term CBP uses for imported merchandise for use in United States commerce. The other two types of consumption entry are “formal entry” (required for merchandise \$2,500 and over) and “informal entry” (available for most merchandise valued at less than \$2,500). Our \$3.35 trillion tally includes formal and informal entry, but not merchandise imported via de minimis.<sup>2</sup>

This is because de minimis is an ungovernable break in our customs controls, where over two million shipments per day enter the United States with little to no scrutiny. Most arrive without digital data, offering only a word or two written on the package to give a hint as to what’s inside. It would take an army to attempt to inspect these shipments.

CBP is flagging the problem in their own muted manner, warning in March 2023: “The overwhelming volume of small packages and lack of actionable data impacts CBP’s ability to identify and interdict high-risk shipments that may contain narcotics, merchandise that poses a risk to public safety, counterfeits, or other contraband.”<sup>3</sup> We know that the majority of de minimis shipments are shipped directly from China and Hong, but after that, it gets murky. The

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<sup>1</sup> <https://www.cbp.gov/newsroom/stats/trade>

<sup>2</sup> <https://www.wsj.com/articles/the-tiny-loophole-that-understates-the-trade-deficit-with-china-11655458201?mod=mhp>

<sup>3</sup> <https://www.cbp.gov/sites/default/files/assets/documents/2023-Mar/NGF%20E-Commerce%20Task%20Issue%20Paper%20March%202023.pdf>

next largest origin country is Canada, but due to the lack of data on de minimis shipments, we do not know the merchandise country of origin for most of those shipments from Canada.

**Part I of this testimony lays out the alarming facts as to how de minimis undermines scores of U.S. laws and regulations, not to mention fundamental societal norms.** Examining the development of the de minimis fiasco offers a foundation for understanding other negative customs policies that frustrate Congressional expectations in issues such as product safety, narcotics laws, and forced labor laws.

**Part II of this testimony moves on to discuss integrity issues in the other entry types.**

### **Part I: De Minimis**

#### **Why Congress created ‘de minimis’**

When goods are brought into the country, the law says the customs officers must record merchandise’s value, catalog its importation by way of an ‘Entry’ form and ‘Entry Summary’, and collect any applicable tariffs and taxes. If customs law did not make an exception to this requirement for trivial items, however, customs officers would be forced to do the assessment for every little souvenir or knick-knack brought in from abroad. Imagine being asked for copies of receipts for the snow-globe and t-shirt you brought back from Paris while standing in the customs line at the airport. Nobody wants that.

This is why, in 1938, Congress created the “De Minimis” rule. “De Minimis” is Latin for “too trivial or minor to merit consideration”. It was added as Section 321 to the Tariff Act of 1930, codified in the U.S. Code at 19 U.S.C. §1321. The law’s opening line states its purpose: “to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected.”

*Crucially, this is the reason merchandise imported via de minimis is admitted “free of duty and of any tax” – because no entry was assessed to begin with. The assumption was that any revenue gained would not be worth the officer’s time at performing the assessment. This clearly no longer holds true.*

To this day, 19 U.S.C. §1321 is titled “Administrative exemptions”. This is yet another clear indicator that Congress never intended de minimis to be a channel for import commerce consisting of millions of packages per day. And it is why it is appropriately called a “loophole”, one that was enabled not by Congress but by regulatory rule-making, as will be discussed below.

#### **The Three Different Types of De Minimis Entry**

Congress created three separate types of de minimis entry covering two different scenarios, and a catch all. They are still enumerated in the law today:

1. 19 U.S.C. §1321(a)(2)(A): **“Bona fide gifts”** shipped from abroad;
2. 19 U.S.C. §1321(a)(2)(B): **“articles accompanying”** travelers for “household use”; and
3. 19 U.S.C. §1321(a)(2)(C): **“any other case”**.

Originally, in 1938, Congress assigned a \$5 threshold for bona fide gifts and personal effects travelers brought with them, and a \$1 de minimis for “any other case”. “Any other case”, (a)(2)(C), was never meant to be a channel of any meaningful volume of goods. Yet today, the “anything else” category is what is being used to waive through millions of shipments per day! Having been lightly touched since its 1938 inception, as of 1994, the de minimis thresholds stood at \$50 for bona fide gifts from abroad, \$25 for souvenirs brought back, and just \$5 for anything else.

### **1994: Birth of the De Minimis Loophole via Customs Rule-making**

NAFTA went into effect on January 1, 1994, and was a high-profile legislative event. It thus largely overshadowed another monumental piece of legislation that was passed alongside NAFTA: the Customs Modernization Act, or “Mod Act.” The Mod Act increased the bona fide gift threshold from \$50 to \$100; “accompanying articles” from \$25 to \$200 for; and a tremendous increase from \$5 to \$200 for de minimis. In the legislative record, however, Congress focused on the first two categories, but not the “in any other case” increase to \$200 alongside the “accompanying articles” increase.

Besides the raise from \$5 to \$200, the other transformative change happened not from the 1994 Mod Act, but when U.S. Customs service drafted their subsequent implementing regulations that allowed any “consignee” to import merchandise, without even the use of a customs broker. The National Customs Brokers and Forwarders Association of America (“NCBFAA”), founded in 1897, is the trade association representing the customs brokers’ profession and was very involved in the development of the Mod Act. It is telling that an organization so involved in the legislative process was stunned by the subsequent interim regulations.<sup>4</sup>

**Customs brokers were alarmed because the norm around the world was that only owners, purchasers, or a customs broker hired by the owner or purchaser could do an importation. This is the norm because importers are expected to be knowledgeable about the merchandise they are importing. They are expected to be able to answer customs officers’ questions. This norm is U.S. law, 19 U.S.C. §1484, except for de minimis. Allowing “consignees” to perform import entries meant that parcel carriers (e.g. mail carriers and express couriers) could perform imports despite having no knowledge of the merchandise beyond what is written on the declaration.**

The NCBFAA filed an emergency lawsuit, claiming that the U.S. Customs Service was violating statute with these regulations. Multiple reasons were cited, but importantly from a policy perspective was the fact that the law (19 U.S.C. §1484) mandated that “only an owner, purchase, or licensed broker may make entry of merchandise.”<sup>5</sup> Doing away with this requirement for de minimis shipments would lead to a host of grave issues.

NCBFAA cautioned that “Customs is abrogating its responsibility to enforce certain laws and is providing opportunities for their violation.”<sup>6</sup> While NCBFAA’s lawsuit was against the U.S. Customs Service, the express shippers joined as defendant-intervenors. The federal court that

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<sup>4</sup> [\*National Customs Brokers & Forwarders Ass’n of America, Inc. v. United States\*](#), 861 F.Supp. 121, 125 (1994)

<sup>5</sup> *Id.*, 128.

<sup>6</sup> *Id.*

heard the challenge understood the consequential nature of the case, writing “With regard to [the express shippers], resolution of this matter will define their frontier in this industry.”<sup>7</sup>

NCBFAA warned the court and the country as follows:

Specifically, plaintiff points out ... the proposed regulations allow entry of shipments valued at amounts up to \$200 through summary manifest information, that is, without any requirement of a Harmonized Tariff Schedule of the United States (HTSUS) subheading number, and exempt these shipments from the requirement of filing an entry summary. Plaintiff contends that this lax entry procedure will create difficulties for Customs relative to the enforcement of visa requirements for apparel, intellectual property rights for patents and copyrights, and antidumping and counter-vailing duty orders. Plaintiff contends that the proposed changes will hinder the Food and Drug Administration’s enforcement capabilities as well.<sup>8</sup>

Unfortunately, the court found that the Secretary of the Treasury had broad rule-making authority governing de minimis shipments, and thus ruled against the NCBFAA. The above prediction is precisely what has transpired.

### **The Final Rule Docket Also Accurately Predicted the Many Calamities of De Minimis**

Following the lawsuit, on April 14, 1995, the Customs Service published its Final Rule (60 FR 18983) in the Federal Register, and here too, the docket was filled with commentators who accurately predicted the myriad of problems.<sup>9</sup>

### **FDA Abandons Oversight Role for Food, Cosmetics, and More**

Just as the NCBFAA predicted, FDA concluded that it should simply abandon oversight for various imports it is supposed to monitor, including room-temperature food stored in air-tight containers and cosmetics.<sup>10</sup> The FDA’s dereliction of duty continues to this day for millions of shipments from around the world, most of which originate from China.

### **2015: De Minimis Rises from \$200 to \$800 without debate**

Express shippers and e-commerce platforms were able to accomplish a legislative coup in 2015, when they successfully raised the de minimis threshold from \$200 to \$800. This was a provision tucked into the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”). TFTEA did include a number of improvements to our anti-dumping and countervailing duty laws, and thus earned support from businesses and groups who typically favor strong trade enforcement. Unfortunately, as in 1994, this change from \$200 to \$800 did not face Congressional scrutiny, and was obscured by other customs issues. Congress cannot let this happen again as it takes up customs policy.

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<sup>7</sup> *Id.*, 126.

<sup>8</sup> *Id.*, 129.

<sup>9</sup> 60 FR 18983, <https://www.federalregister.gov/documents/1994/06/13/94-14255/express-consignments-formal-and-informal-entries-of-merchandise-administrative-exemptions>

<sup>10</sup> FDA CSMS #94-001260, “FDA Low Value Shipments”)

### **A note about de minimis monetary thresholds**

Because de minimis is now associated with e-commerce, it is often erroneously assumed that the \$800 limit refers to a U.S. retail price. But because de minimis was never meant to be an avenue of commerce, the U.S. retail price is actually irrelevant in determining whether the \$800 threshold has been met. Instead, per 19 U.S.C. § 1321(a)(2), the \$800 is the “fair retail value in the country of shipment” – not of America.

### **“Consignee Entry” Combined with an \$800 De Minimis threshold transformed the nature of international trade and e-commerce in America.**

Under the traditional trade paradigm, importers were typically wholesalers or large retailers, importing particular products by the container-load and then distributing those products domestically. Essentially, merchandise was almost always shipped in bulk. This made regulating and policing import commerce fairly straight forward. **Conversely, with de minimis’ consignee entry, that same shipping container may now have as many as 5,000 individual shipments, all small packages going to individual Americans.**

China’s SHEIN and Temu are now the most downloaded e-commerce apps in the United States, and their operations are almost entirely outside the country. Mailbox sized shipments are sent directly from abroad, and imported via de minimis entry with little documentation. SHEIN is now larger than The Gap, and the United States misses out not only on revenue from duties, but also the over twenty-percent corporate income tax rate The Gap is subject to as they are displaced by SHEIN. This is extremely problematic for CBP, because they face a comparable work load whether a bill of lading represents an entire shipping container or one individual package.

This is how Laurie Dempsey, CBP’s Director of Intellectual Property Rights, described the situation in 2019:

TFTEA’s change to the de minimis value, however, caused a dramatic increase in the volume of shipments making use of de minimis entry procedures. These procedures provide fewer data elements for CBP to use to effectively identify and target high-risk shipments, including for narcotics, counter-proliferation, and health and safety risks. The dramatic increase in shipments has left CBP with less information about a greater number of shipments.

The increasing use of new and changing industry business models, particularly in the e-commerce environment, further exacerbates this information gap. **Entities receiving goods in the United States, which CBP previously believed to have limited financial interest in a shipment, are now critical players with increasing influence in how low-value goods move around the world.**

This shift in the roles of parties to the transaction has not been accompanied by a change in responsibilities from a regulatory or policy perspective. Moreover, the advent of just-in-time delivery, along with contract manufacturing and online payment processing, has given merchants more flexibility and greater access to markets once limited by location.



Free trade agreements have also allowed new routes for goods from all over the world to cross borders more easily.

**CBP is concerned that the proliferation of new and changing business models, particularly in the e-commerce environment, and the increase in small packages, is permitting bad actors to operate with relative impunity.<sup>11</sup>** (Emphasis added)

### **China is the biggest user of de minimis, and most counterfeits are from China and arrive to the United States via Express Consignment and International Mail**

The most recent data for where de minimis shipments originated from (not the same as where the merchandise is from) is for CBP's FY2021. In that year, 771.4 million de minimis shipments were made. 475 million, or 62.5%, were shipped directly from China and Hong Kong.<sup>12</sup>

According to CBP: "Over 90 percent of all intellectual property seizures occur in the international mail and express environments. The People's Republic of China (mainland China and Hong Kong) remained the primary source economy for seized counterfeit and pirated goods, accounting for 83 percent of all IPR seizures and 92 percent of the estimated MSRP value of all IPR seizures."<sup>13</sup>

### **Is De Minimis a Loophole?**

Last month, CBP's Executive Director of the Trade Policy and Programs Directorate, said in an interview with *International Trade Today* that "De Minimis is not a loophole."<sup>14</sup> Perhaps that is true from the point of view of Customs regulations. Merriam-Webster defines "loophole" as "an ambiguity or omission in the text through which the intent of a statute, contract, or obligation may be evaded."

Does the reality of millions of shipments per day unaccounted for in our trade statistics and causing CBP to say the agency is "overwhelmed" sound like something that meant to happen when legislated under "Administrative exemptions" in 19 U.S.C. §1321? No. It sounds like the intent of the Administrative Exemption has been evaded, which fits the definition of statutory loophole. CBP staff should also take note that logistics companies in Canada and Mexico actively market de minimis as a "loophole" vendors should exploit.<sup>15</sup>

### **Free Trade Zone Operators Have Advocated Classic Race-to-the-Bottom**

One limitation on de minimis eligibility is that the \$800 threshold applies to "articles imported by one person on one day". CBP has held, correctly, that the statute does not authorize de

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<sup>11</sup> U.S. Department of Homeland Security, "Privacy Impact Assessment for the E-Commerce "Section 321" Data Pilot", DHS/CBP/PIA-059 (September 26, 2019), page 2, *available at* <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-section321-059-september2019.pdf>

<sup>12</sup> [https://www.cbp.gov/sites/default/files/assets/documents/2022-Oct/FY2018-2021\\_De%20Minimis%20Statistics%20update.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Oct/FY2018-2021_De%20Minimis%20Statistics%20update.pdf)

<sup>13</sup> CBP Media Release, "\$115K of Counterfeit Items Seized by CBP Officers in Louisville" (August 19, 2020), *available at* <https://www.cbp.gov/newsroom/local-media-release/115k-counterfeit-items-seized-cbp-officers-louisville>

<sup>14</sup> Mara Lee, "CBP Trade Policy Director: de Minimis is No Loophole", *Int'l Trade Today*, (April 24, 2023), *available at* [https://internationaltradetoday.com/reference/2304240038?BC=bc\\_6468f8b429f40](https://internationaltradetoday.com/reference/2304240038?BC=bc_6468f8b429f40)

<sup>15</sup> <https://www.stalcofulfillment.com/section-321/>

de minimis importations to originate from within a Free Trade Zone (“FTZ”) inside the United States.

As the use of de minimis has grown drastically, operators of FTZ warehouses have begun complaining that they are losing business to bonded warehouse operators in Canada and Mexico, who are able to originate de minimis shipments into the United States. Merchandise from China can be sent from China to these Canadian and Mexican warehouses, stored in bond (thus never being formally entered into Canada or Mexico), and shipped rapidly to U.S. consumers when an e-commerce order is placed.

FTZ operators are rightly upset about losing business to this loophole. But extending them the ability to originate de minimis shipments is classic ‘race to the bottom’ trade policy. If we do that, then every Amazon fulfillment warehouse across America will demand the same treatment out of fairness. And if we grant it to them, every big box store will want the same. We will have eviscerated the customs integrity of our nation.

### **Digital Data Cannot Save De Minimis Because the Declarations are made by Foreign, Judgement-Proof Shippers Without the Use of Customs Brokers**

Since 2018 there have been efforts to promote “digital data” for de minimis shipments. And currently, almost half of all de minimis shipments provide some limited data through two CBP pilot programs. However, CBP staff have now revealed that this data is essentially worthless.<sup>16</sup> One of the pilot programs — Type 86 entry — allows overseas vendors to “self-file” package data, but these vendors are typically outside U.S. jurisdiction. The other program—Section 321 e-commerce data pilot—allows Amazon and other large e-commerce retailers to input webpage listings instead of the actual data, especially HTS numbers, expected of normal businesses.

CBP officials are reporting that, even with these enhanced data collection procedures, 25 percent of packages still contain faulty labeling.<sup>17</sup> A mail carrier or express shipper can’t answer anything about a package’s contents beyond what’s written on the shipping label. Customs officers have only the declarations, and nothing more. Officers are forced to trust that the foreign vendor accurately reported their declarations.

And there is no accountability for bad data. With Type 86, foreign businesses aren’t accountable for misclassifying. And with the 321 e-commerce pilot, CBP does not even ask for HTS numbers. But even if we had perfect HTS numbers – which will never happen so long as customs brokers aren’t required – there would still be no way to police millions of daily shipments. CBP staff also revealed that another 25 percent of de minimis shipments with digital data evaded inspection even when there was a specific hold order from CBP.<sup>18</sup>

The Consumer Products Safety Commission is not surprised by the data pilot failures. The Commission sounded the alarm over its ability to fulfill its mandate in regard to de minimis shipments at the outset, stating in its e-Commerce assessment that the Commission “will benefit

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<sup>16</sup> <https://internationaltradetoday.com/news/2023/04/17/Type-86-Test-Revealing-Compliance-Weaknesses-in-Small-Packages-2304170052>

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

little from the [Type 86] test and will continue to experience the data and targeting challenges described above.”<sup>19</sup> There is simply no way to police millions of daily small package shipments direct from overseas vendors to American consumers.

Think of children’s toys. Before de minimis, wholesalers or large retailers would order toys in bulk. When a shipping container arrives full of a particular toy, federal inspectors can take one for testing. If the sample contains unacceptable lead levels, the entire shipment will be rejected. However, such scrutiny is impossible for millions of individual, direct shipments from overseas vendors mailed direct to Americans’ homes.

Forced labor cotton from China has become a significant issue for this Congress and the last. And while it’s conceivable to hold big importers like The Gap that import in bulk accountable, there is zero chance of policing individual shipments of t-shirts and socks that go from overseas warehouses directly to Americans’ mailboxes.

Failing to fix de minimis means giving up on all of our societal norms, from product safety standards to forced labor bans, and perpetuates an unfair advantage that primarily helps Chinese vendors at the expense of tax-paying American businesses.

### **CBP’s Office of Trade Released False Statistics on De Minimis, and Refused to Correct**

In October 2022, for the first time, CBP’s Office of Trade purported to show the “total value” of de minimis shipments, covering its fiscal years 2018 through 2021. This was a surprise to my organization, as we knew that no one was manually tabulating the asserted values written on the side of hundreds of millions of de minimis shipments each year. So how could CBP know the “total value?”

After confirming with a source at CBP that the figures CBP’s Office of Trade was listing were only the total value of de minimis shipments *which had electronic filings*, CPA demanded a correction.<sup>20</sup> Regrettably, CBP’s Office of Trade did not respond.

### **CBP ‘Targeting’ Programs Should Not Be Confused with CBP Entry Forms**

In the same interview where CBP’s Deputy Director Lord said that de minimis was “not a loophole”, the Director said the following: “There’s a misconception that we don’t target or screen de minimis – it’s not true.”<sup>21</sup> This assertion obfuscates the reality that de minimis shipments are largely a black box as reliable data does not exist.

CBP’s targeting systems, such as e-Manifests and the Air Cargo Advance Screening (ACAS) system, were born of the Trade Act of 2002, and are not designed to catalog imports. CBP Entry Summaries, which include HTS numbers and provide product-level information for a financial

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<sup>19</sup> <https://www.cpsc.gov/s3fs-public/CPSC-e-Commerce-Assessment-Report.pdf>

<sup>20</sup> Press Release: “Coalition for a Prosperous America Urges Customs to Publicly Correct False Statistics on De Minimis”, November 2, 2022, *available at* <https://prosperousamerica.org/cpa-urges-customs-to-publicly-correct-false-statistics-on-de-minimis-shipments/>

<sup>21</sup> Mara Lee, “CBP Trade Policy Director: de Minimis is No Loophole”, *Int’l Trade Today*, (April 24, 2023), *available at* [https://internationaltradetoday.com/reference/2304240038?BC=bc\\_6468f8b429f40](https://internationaltradetoday.com/reference/2304240038?BC=bc_6468f8b429f40)

transaction between a seller and a buyer, are what is used to enforce our myriad of laws governing products and upholding policies such as our ban on forced labor goods.

*An Entry Summary (CBP Form 7501) is the essential document for cataloging the import of a product.* Of the three types of importations under U.S. customs law, it is required for all imports except de minimis.<sup>22</sup>

### **Other Countries Do Not Want Anything Resembling U.S. De Minimis Policy**

For decades, since the original creation of the de minimis loophole in 1994, supporters of consignee-entry have advocated for other countries to adopt U.S.-style de minimis lawlessness, often with the support of past U.S. trade representatives. Every other country has fiercely resisted. Canada has arguably been the biggest target of this advocacy. Express shippers enjoyed some success in the USMCA negotiation, but even here, where Canada had so much to lose, they only raised their version of de minimis (no duties assessed) to \$150CAD, a far cry from our \$800 USD.

Only looking at the monetary threshold betrays how little of U.S.-style de minimis Canada has adopted, however. Notably, following passage of USMCA, Canada only extended de minimis privileges to contract carriers (not the mail). Canada also required that de minimis shipments had to originate from U.S. or Mexican commerce (not anywhere in the world), and that businesses could not use de minimis for imports, only orders placed by individual consumers were eligible.<sup>23</sup>

Europe also abolished de minimis in July 2021 as it relates to the EU's VAT, citing principles of fundamental fairness.

**Even if perfect, accurate, digital data for De Minimis shipments was obtainable, and even if CBP had the hundreds of thousands of officers needed to scrutinize millions of small packages per day, we would still be left with a fundamental unfairness.**

Why should a brick-and-mortar retailer have to pay the duty on all its imported merchandise, but not an e-commerce platform? If AutoZone or Costco wants to import tires to sell in-store or online, they must pay the duty, but if a consumer wants to order tires from Canadian Tire (not present in the United States), they can arrange for those tires to be imported and delivered free of duty? How does this make any sense?

It's a repeat of the unjustness that perpetuated for far too long, as e-commerce websites were not required to collect state sales tax. Congress eventually fixed that, too, despite years of warnings. It's time to fix de minimis as well.

## **Part II: Formal Entry and Other Issues**

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<sup>22</sup> "Because a shipper does not submit entry data through CBP's automated portal when importing under the de minimis exception, information regarding these products is not collected and available for review for CBP enforcement purposes or other agencies with an interest in the information." Livingston International, "The Unintended Consequences of Raising the De Minimis Level", [https://www.livingstonintl.com/livingston-content/uploads/2018/04/NAFTA-De-Minimis\\_FINAL-November-13-2017.pdf](https://www.livingstonintl.com/livingston-content/uploads/2018/04/NAFTA-De-Minimis_FINAL-November-13-2017.pdf)

<sup>23</sup> <https://www.cbsa-asfc.gc.ca/publications/dm-md/d8/d8-2-16-eng.html>

**Shipping Manifest Transparency:** The United States should match Mexico when it comes to shipment transparency. Regrettably, only ocean vessel manifests are currently subject to disclosure by CBP, but land and air entries remain entirely confidential. And even ocean vessel manifests are increasingly hidden, as businesses request – and seemingly automatically receive – confidentiality treatment from CBP. This is happening even as the burden of policing imports for compliance with laws increasingly falls on U.S. industry. Major manufacturers have reported to CPA that they have found Mexican shipping data to be essential in policing trade remedy orders for circumvention, due to heightened confidentiality treatments in the United States.

**The Commercial Customs Operations Advisory Committee (COAC):** COAC was created by Section 109 of the Trade Facilitation and Trade Enforcement Act of 2015. The COAC is not a standard industry advisory group that focuses on technical consultations. CBP has that, known as the Trade Support Network (TSN) which “provides a forum for the trade community to provide recommendations and input on customs automation and modernization.”<sup>24</sup>

Rather, the COAC acts as a vehicle by which the offshoring industry captures and obstructs CBP’s trade enforcement agenda outside the public eye. For example, an official COAC Recommendation published on September 14, 2022, stated that “COAC recommends that CBP share with the E-commerce Task Force the initial HTSUS waiver proposal draft, compliance process, and/or additional data waiver prior to its finalization, **and prior to any notice or release to the public.**”<sup>25</sup>

The COAC itself has quarterly public meetings, but these public meetings are performative only. CPA had to protest after finding that COAC was skipping even the scheduled time for public comment at these highly scripted meetings. The lack of interest or consideration for public input makes sense, as the actual work and deliberation of the COAC happens entirely outside of the meetings, at the Subcommittee level and below.

Subcommittees, in turn, have Working Groups, better understood as secret clubs. Assignments to working groups are confidential. No one, except the individual COAC Members, is allowed to know who is participating in a Working Group outside their own. All members are required to sign Non-Disclosure Agreements (NDAs) with CBP, so a representative on a Working Group does not even have the liberty to confer with colleagues about their work. There are no rules to the meetings within a Working Group; the COAC member leading the group is free to disregard anything that comes out of the Working Group when they work with fellow members at the Subcommittee Level to develop COAC Recommendations. In this fashion the COAC undermines the moralities guarded by constitutional due process requirements in administrative rule-making.

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<sup>24</sup> <https://www.cbp.gov/trade/ace/trade-support-network>

<sup>25</sup> COAC Next Generation Facilitation Subcommittee,  
[https://www.cbp.gov/sites/default/files/assets/documents/2022-Sep/22\\_0901\\_ngf-e-commerce-recommendation.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Sep/22_0901_ngf-e-commerce-recommendation.pdf)

Chairman Smith of Nebraska. Thank you.

Ms. Vandenberg, you are recognized for 5 minutes.

**STATEMENT OF MS. MARTINA VANDENBERG, FOUNDER AND PRESIDENT,  
HUMAN TRAFFICKING LEGAL CENTER**

Ms. Vandenberg. Thank you very much.

Chairman Smith, Ranking Member Blumenauer, and distinguished members of the subcommittee, it is an honor to testify before you today.

My name is Martina Vandenberg, and I am president of the Human Trafficking Legal Center, a nongovernmental, nonprofit organization that fights forced labor around the globe.

And forced labor today is a feature, not a bug, in global supply chains. The International Labor Organization estimates that 27.6 million people are held in forced labor around the globe. Those workers -- Uyghurs held in forced labor in factories and internment camps in China; garment workers held in forced labor in sweatshops in Bangladesh; factory workers manufacturing rubber gloves in conditions of forced labor in Malaysia; children held in forced labor producing cocoa; fishers trapped in forced labor on vessels engaged in illegal, unreported, and unregulated fishing in our oceans; and so many more -- are producing goods that are imported into the United States every day.

There is no way that U.S. workers can compete with workers held in forced labor. To protect American workers, we must eradicate forced labor across the globe. To protect American workers, we must protect all workers.

In my written testimony, I discuss four key issues that I would like to touch on briefly this morning.

First, no safe harbor for forced labor. The Human Trafficking Legal Center serves as the secretariat of the Tariff Act Advisory Group, a coalition of organizations fighting for the enforcement of forced labor import prohibitions.

Import bans are powerful tools to combat forced labor. Human rights and labor rights organizations have advocated for robust enforcement of section 307 of the Tariff Act and the Uyghur Forced Labor Prevention Act. But we have learned that it is not enough for the United States alone to prohibit the importation of goods made with forced labor into our markets. There should be no forced labor anywhere in the world for goods made with forced labor, which brings me to my second point, which is enforcement.

CBP's robust enforcement efforts have transformed forced labor from a public relations issue to a serious compliance issue. In fiscal year 2022, the United States targeted more than 3,605 shipments valued at \$816.5 million under its forced labor enforcement mandate, and the majority of this enforcement, nearly \$500 million, was under the Uyghur Forced Labor Prevention Act alone.

Unfortunately, these numbers do not reveal the full picture. Only a few hundred shipments were actually denied entry at U.S. ports.

In addition, we have also seen a troubling decline in the number of withhold release orders under the Tariff Act, section 307, which prohibits the importation of goods mined, produced, or manufactured by forced labor. In fiscal year 2020, CBP issued 13 withhold release orders; in 2021, seven; in 2022, the number dropped to just six withhold release orders.

These dwindling withhold release orders are troubling, especially since we know that multiple forced labor petitions have been pending with CBP for years. Organizations like mine file petitions with CBP to block goods made with forced labor from entering the U.S. market, and we are able to do so because we can submit allegations with low barriers

to entry. CBP must resist efforts advanced by corporate lobbyists to make it more difficult to position CBP to block goods under section 307.

We know that CBP is currently investigating more than 40 allegations, and CBP needs funding and resources in order to do that enforcement.

Customs data transparency has already been addressed by this panel, but I want to reiterate that we cannot combat forced labor without customs data transparency.

The de minimus rule has also been addressed by this panel, and I would also like to reiterate that, under current U.S. law, this \$800 de minimus shipment has allowed goods made with forced labor to circumvent the protections of section 307, to circumvent Congress' protections against Uyghur forced labor, and those goods are entering the United States.

In conclusion, I would just like to close by bringing the focus back to where it belongs: on workers. Workers in the United States benefit when they do not have to compete against workers held in forced labor in global supply chains.

In addition to enforcement of trade remedies, the U.S. should invest in labor rights around the globe, freedom of association, the right to collective bargaining, and worker-driven social responsibility. Together we can eradicate forced labor around the globe, and Congress has already taken many steps to do so.

I look forward to your questions.

[The statement of Ms. Vandenberg follows:]

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**Committee on Ways and Means**

**Subcommittee on Trade**

**Hearing:**

***Modernizing Customs Policies to Protect American Workers and Secure Supply Chains***

**Testimony of Martina E. Vandenberg**

**President, The Human Trafficking Legal Center**

May 25, 2023

Trade Subcommittee Chairman Adrian Smith, Ranking Member Blumenauer, and distinguished members of the Ways and Means Subcommittee on Trade:

It is my honor to testify before you today on the important topic, *Modernizing Customs Policies to Protect American Workers and Secure Supply Chains*.

My name is Martina Vandenberg and I serve as the President of the Human Trafficking Legal Center, a non-profit organization that works to combat forced labor and human trafficking worldwide. The Human Trafficking Legal Center uses trade remedies, strategic litigation, research and advocacy to expose the system failures that allow forced labor to flourish. We pursue accountability – from traffickers, from governments, and from corporations.

Forced labor is not an aberration. It is a feature, not a bug, in global supply chains. The latest International Labor Organization (ILO) estimates indicate that 27.6 million people are held in forced labor around the world.<sup>1</sup> Weak Corporate Social Responsibility (CSR) schemes and voluntary corporate codes of conduct have failed to identify, prevent, or eradicate forced labor. According to the ILO, at least 17.3 million people are exploited in the private sector.<sup>2</sup> Corporations continue to reap profits on the backs of workers held in forced labor around the world, many of whom are trapped in cycles of debt bondage and abuse. And allowing goods made using forced labor to permeate American supply chains has undermined U.S. workers, who cannot compete.

As Nury Turkel, Chair of the U.S. Commission on International Religious Freedom, testified powerfully at the Ways & Means Committee hearing on Staten Island earlier this month on Uyghur forced labor in China, “the unfair business practices imposed [by] competing with a country engaged in forced labor

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<sup>1</sup> <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

<sup>2</sup> *Id.*

create an environment in which competition is truly impossible” for American workers.<sup>3</sup> Trade remedies, properly deployed, benefit workers in the United States and abroad.

I will address four central points at this hearing:

- The need to encourage our allies and trading partners to adopt forced labor import bans;
- The need for robust U.S. enforcement of Section 307 of the Tariff Act and the Uyghur Forced Labor Prevention Act;
- The need for more, not less, customs data transparency; and
- The need to amend the law on de minimis shipments.

#### There Should be No Safe Harbor for Forced Labor: The Case for Global Forced Labor Import Bans

It is particularly appropriate for the subcommittee to hold this hearing during World Trade Week. As U.S. Trade Representative Ambassador Katherine Tai recently stated, trade can be a “force for good to improve the lives of workers in the United States and around the globe.”<sup>4</sup> But in order for that to be the case, the U.S. government must enforce prohibitions on forced labor. And, as Ambassador Tai has noted, the U.S. must continue to advance robust labor standards in all international trade negotiations. It is not enough for the United States to prohibit the importation of goods tainted by forced labor into our markets under Section 307 of the Tariff Act. It is not enough for the United States, alone, to enforce the Uyghur Forced Labor Prevention Act. Our trade partners must adopt – and enforce – similar prohibitions. Enforcement in only one country leads to predictable results: export of tainted goods to countries without forced labor prohibitions.

The Human Trafficking Legal Center serves as the secretariat of the Tariff Act Advisory Group (TAAG), a coalition of organizations advocating for the enforcement of forced labor import prohibitions. The Tariff Act Advisory Group members have joined forces with partner non-governmental organizations around the globe to press for the adoption of forced labor import bans worldwide. Forced labor import prohibitions are already required under the US-Mexico-Canada Agreement (USMCA). But Canada and Mexico are lagging on enforcement.

Enforcement in one country is not enough. There should be no safe harbor for goods made with forced labor.

#### Enforcement Matters: Enforcement Recommendations and the Need for Resources

We are encouraged by U.S. Customs and Border Protection’s efforts to combat forced labor in U.S. supply chains. CBP’s robust enforcement efforts have transformed forced labor from a corporate public relations matter to a corporate compliance matter: forced labor risks have become a C-Suite issue. As DHS Under Secretary Robert Silvers noted recently in an interview with the *Wall Street Journal*, forced labor is now a top-tier compliance issue, now ranked in the same category as bribery and corruption

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<sup>3</sup> <http://waysandmeans.house.gov/wp-content/uploads/2023/05/Nury-Turkel-Written-Testimony.pdf>

<sup>4</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/statement-ambassador-katherine-tai-commemorating-world-trade-week>

allegations. According to Undersecretary Silvers, “[F]orced labor belongs in the same breath as Foreign Corrupt Practices Act (FCPA).”<sup>5</sup>

CBP’s most recent data releases provide insight into current enforcement.<sup>6</sup> In FY2022, the United States “targeted” more than 3,605 shipments valued at \$816.5 million under its forced labor enforcement mandate. The majority of this enforcement – nearly \$500 million USD – was under the Uyghur Forced Labor Prevention Act (UFLPA) alone. CBP’s latest UFLPA data dashboard provides a snapshot of the agency’s FY2023 enforcement thus far: nearly \$608 million USD worth of shipments “targeted” over Uyghur forced labor concerns.

Unfortunately, these numbers do not reveal the full picture. Only a few hundred shipments were actually denied entry at U.S. ports. Section 307 Tariff Act and UFLPA enforcement has netted only a fraction of the billions of dollars worth of forced labor-tainted shipments entering U.S. markets each year. Many more shipments are dumped in other countries with no market restrictions on forced labor. Moreover, we have seen a troubling decline in the number of Withhold Release Orders (WROs) issued under Section 307 of the Tariff Act. In FY2020, CBP issued 13 Withhold Release Orders against entities around the world for violating Section 307’s general prohibition against the U.S. importation of goods mined, produced, or manufactured wholly or in part by forced labor. In FY2021, CBP issued only 7 WROs. And in FY2022, that number dropped to just 6 WROs.

These dwindling WRO numbers are troubling, especially since we know that multiple forced labor petitions have been pending with CBP for years. Civil society petitions are critical to Section 307 enforcement. Those petitions take an enormous investment of resources. Non-governmental organizations collect first-hand evidence of forced labor across the globe and link that evidence to U.S. supply chains. Much of this work is done by understaffed and under-resourced workers’ rights organizations, often at great personal and organizational risk.

In a recent CBP-Civil Society Organization roundtable meeting, CBP officials reported that the agency is currently investigating more than 40 allegations received under Section 307. We urge members of this Committee to ensure that CBP receives adequate funds earmarked for Section 307 enforcement, including resources to expand CBP’s forced labor division to tackle the existing case load. It is vital that CBP act on pending forced labor allegations and issue more WROs against forced labor.

But issuing WROs is only the first step. CBP should also scale up its 307 enforcement efforts at port to block more forced labor tainted shipments from entering U.S. markets. We also urge the agency to disclose its Section 307 enforcement results, disaggregated by multiple data points, including the WRO invoked, the products involved, the type of CBP enforcement action (detention, pending review, release), corresponding dollar value, country of origin of forced labor tainted goods, and country of re-exportation (where applicable). CBP should also clarify the ultimate disposition of the goods subject to enforcement actions. The agency is already collecting and analyzing much of this data as part of the UFLPA enforcement statistics dashboard. We hope that CBP will expand its enforcement transparency under Section 307 in the near future.

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<sup>5</sup> <https://www.wsj.com/articles/forced-labor-a-top-tier-compliance-issue-says-u-s-official-11664271003>

<sup>6</sup> <https://www.cbp.gov/newsroom/national-media-release/cbp-highlights-top-2022-accomplishments>

We also recommend that CBP streamline its Section 307 intake process by instituting a single point for receiving allegations and all supporting evidence (in multiple formats). We commend the agency for recent publications clarifying the types of documents needed to support a Section 307 petition.<sup>7</sup> This guidance is useful to civil society organizations as we continue to submit 307 allegations. That said, CBP must resist efforts – often advanced by corporate lobbyists – to dilute Section 307. The low barrier to entry for petitioners to submit forced labor allegations is essential and must be preserved.

*CBP should Issue more “Findings” and monetary penalties for forced labor:*

Under 19 CFR § 12.42(f), if the CBP Commissioner determines that goods tainted with forced labor are being, or are likely to be, imported into the United States, the Commissioner can issue a “Finding.” Once a Finding is issued, under 19 CFR § 12.44(b), CBP can seize and forfeit the goods, rather than just detaining shipments under a WRO. To date, CBP has only issued 9 Findings. The human rights and labor rights community would like to see the agency issue more Findings and seize forced labor tainted goods at port. Seizure is the best method to prevent re-export to other countries.

The NGO community has also long advocated for more monetary penalties (and for larger amounts) against companies that benefit from forced labor. These fines have the power to deter companies from importing goods made with forced or prison labor. Under 19 U.S.C. § 1595a (aiding unlawful importation)<sup>8</sup>, CBP has the authority to impose monetary penalties against U.S. importers that source forced labor tainted goods in violation of U.S. law. In August 2020, CBP issued a monetary penalty for importing stevia – an artificial sweetener – made using prison labor against a U.S. importer. CBP fined the importer, a U.S. company, \$575,000 for this violation of the Tariff Act.<sup>9</sup> We have not seen a single forced labor penalty since.

We urge CBP to leverage all available authorities to impose monetary penalties against companies that violate Section 307. U.S. buyers should be held accountable for their role in enabling forced labor to thrive overseas.

*Congress should continue to increase – not slash – CBP funding for forced labor enforcement*

Enforcement requires significant resources. We are extremely concerned about threats to cut the CBP’s forced labor budget – and all federal agency budgets – to 2022 levels. Such cuts would eviscerate the enforcement of these important laws. There is bi-partisan support for Section 307 and UFLPA: this is not the time to obliterate CBP forced labor budget increases that have made this enforcement strategy possible.

As one of the world’s largest economies, the United States must scale up its efforts to enforce existing laws on forced labor. Robust enforcement of Section 307 of the U.S. Tariff Act and the Uyghur Forced

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<sup>7</sup> <https://www.cbp.gov/document/publications/forced-labor-allegation-submission-checklist>

<sup>8</sup> <https://www.govinfo.gov/content/pkg/USCODE-2021-title19/pdf/USCODE-2021-title19-chap4-subtitleIII-partV-sec1595a.pdf>

<sup>9</sup> <https://www.cbp.gov/newsroom/national-media-release/cbp-collects-575000-pure-circle-usa-stevia-imports-made-forced-labor>

Labor Prevention Act (UFLPA) can serve as a powerful tool to disrupt the use of forced labor in global supply chains. But enforcement requires resources.

### Data Transparency is Essential to the Fight Against Forced Labor

If we are to eradicate forced labor in global supply chains, we need more, not less, customs data transparency. At present, only shipping vessel manifests are publicly available. And even that data may be under threat. In October 2022, the *Associated Press* reported on a leaked proposal from a group of U.S. business giants that serve as members of the Commercial Customs Operations Advisory Committee (COAC), an advisory body to U.S. Customs and Border Protection.<sup>10</sup> Couched in calls for customs “modernization,” the companies proposed legislative changes to hide trade data from the public. Specifically, the proposal sought to shield ocean freight manifests from public disclosure.

Thirty-eight human rights and labor rights organizations, including the AFL-CIO, signed on to an open letter condemning the proposal.<sup>11</sup> As we wrote in the open letter:

Public disclosure of import/export data is critical to tracing and monitoring forced labor risks in supply chains. Transparency of trade data is already far too limited. Currently, U.S. federal law (19 U.S.C § 1431) provides for public access only to ocean freight data. Data on air and land cargo is still not accessible to the public. Moreover, U.S. law already grants both importers and shippers the right to request confidentiality of their data on a case-by-case basis (19 C.F.R. § 103.31).

The trajectory should be for more transparency, not less. We advocate for disclosure of air, road, and rail manifests, in addition to maritime vessel manifests, while the COAC proposal seeks to shroud all import data behind a thick veil of secrecy. We urge CBP to reject calls for more “confidentiality” and instead disclose all types of customs data – air, rail, maritime and road – to the public. In addition, we urge CBP not to fall prey to proposals that will drive up the procedural complexity of the forced labor enforcement process, placing burdens both on CBP and civil society that are intended to operate as barriers to the enforcement of existing law.

In sum, U.S. companies cannot publicly claim to oppose forced labor, while lobbying the U.S. Government to shield their supply chains from scrutiny. The effort to hide trade data is aimed at hindering enforcement of provisions banning imports of goods tainted by forced labor, and serves no legitimate public purpose.<sup>12</sup>

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<sup>10</sup> Joshua Goodman, *US businesses propose hiding trade data used to trace abuse*, Associated Press, Oct. 17, 2022, <https://apnews.com/article/business-global-trade-regulation-us-customs-and-border-protection-c878caa703150f417342c9777504b9a1>

<sup>11</sup> Open Letter to CBP on Trade Data Transparency, <https://uhrp.org/statement/open-letter-to-cbp-on-trade-data-transparency/>

<sup>12</sup> *Id.*

In response to the open letter, CBP announced in a meeting with civil society organizations that the agency would not endorse these corporate proposals. Now is the time to enact more transparency: disclosure of air, rail, and road manifests.

### Closing the *de minimis* Shipment Loophole

Under current U.S. law, goods shipped directly to consumers and valued at less than \$800 can enter the U.S. without CBP inspection. This loophole has allowed Chinese companies to bring goods made with forced labor to the U.S. market. As Senator Marco Rubio recently wrote in an op ed published in *Newsweek*:

We must put an end to this practice, for the sake of basic human rights and our nation's sacred values. We also must put an end to it for the sake of our national interest, because American companies lose out when forced to compete with slave labor, and American consumers lose out when they inadvertently buy shoddy, counterfeit, or even harmful goods, all of which may be brought into the U.S. under the \$800 limit.<sup>13</sup>

The import numbers are not small. As my colleague, Anasuya Syam, the Human Rights and Trade Policy Director at the Human Trafficking Legal Center, testified in April before the Congressional Executive Commission on China (CECC), on average, the United States receives three million uninspected *de minimis* packages per day. In FY2022, the United States imported an estimated \$685 million in *de minimis* shipments. Ms. Syam testified:

The U.S. *de minimis* threshold is one of the highest in the world. There are many other companies [in addition to Shein and Temu]<sup>14</sup> with similar direct-to-consumer business models that may be implicated in Xinjiang forced labor. We urge the agency to conduct “spot checks” on *de minimis* packages from companies like Shein at all U.S. ports of entry and begin detaining such packages for potentially violating the UFLPA. This will send a strong message to direct-to-consumer platforms that the *de minimis* provision is not a carte blanche for companies to send goods made using forced labor into U.S. markets. There is an urgent need to monitor the *de minimis* shipping environment and ensure that it is not exploited as a backchannel entry for goods made using forced Uyghur labor.<sup>15</sup>

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<sup>13</sup> Senator Marco Rubio, *A Loophole Is Allowing Slave-Made Goods Into the U.S. We Must Close It*, *Newsweek*, May 9, 2023, <https://www.newsweek.com/loophole-allowing-slave-made-goods-us-we-must-close-it-opinion-1799024>.

<sup>14</sup> Kenneth Rapoza, *Nike, Adidas, Shein, Temu Sent Letter From House China Committee About Forced Labor*, *Forbes*, May 2, 2023, <https://www.forbes.com/sites/kenrapoza/2023/05/02/nike-adidas-shein-temu-sent-letter-from-house-china-committee-about-forced-labor/?sh=5234e94d2f2a>

<sup>15</sup> Testimony of Anasuya Syam, CECC Hearing, Implementation of the Uyghur Forced Labor Prevention Act and the Impact on Global Supply Chains, April 18, 2023, <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/Syam%20Written%20Testimony%20FINAL.pdf>

## Conclusion

We need strong laws and policies that make forced labor unprofitable. A dual-pronged approach will strip away forced labor's profits: first, the U.S. Government must impose significant financial and legal penalties on those who use or benefit from forced labor. And second, the U.S. should invest in labor rights across the globe – freedom of association, the right to collective bargaining, and worker-driven social responsibility. Workers have a right to organize and unionize; exercising those rights can prevent forced labor.

It is time for a paradigm shift: the perpetrators of forced labor must understand that they face real risk – risk of criminal prosecution, risk of financial harm, and risk of inability to import goods into the U.S. market. Making access to markets contingent on the eradication of forced labor is a powerful tool in global supply chains. Import bans against forced labor have an immediate effect on the corporate bottom line. Together, we can dismantle the oppressive economic systems that provide fertile ground for forced labor to flourish.

Chairman Smith of Nebraska. Thank you.

And thank you again to all of our witnesses. I think this is helpful information. It is certainly relevant, and I think it is important that we consider all that has been said today.

I do have concerns that, moving forward, we need to have policies that don't unintendedly trigger an increase in cost of goods. And what we have been facing with inflation has been very tough, ultimately, on consumers and the economy, and so I hope that we can fashion policies moving forward to acknowledge the realities that you mentioned and that we can address those issues.

I do want to, though, confirm, though, Ms. Smith, now, all shipments, all de minimus shipments, and others too, are subject to U.S. laws, and CBP does have the authority to take enforcement action when counterfeits or other illicit items are detected. Is that correct?

Ms. Smith. That is correct.

Chairman Smith of Nebraska. Yeah, thank you.

I do hope that as we do move forward, we can consider things, I think, knowing that de minimus is a privilege and not a right. Perhaps we could look at creating a list of companies that are not permitted to use de minimus based on their record, realizing there is some complexity that would surround that as well and want to make sure that it is enforceable and what we do end up with in policy is enforceable.

Mr. Ferguson, in your testimony, you share how the GSP program, when it isn't expired, I should add, has several benefits for the American economy. It helps companies diversify global supply chains, aids in friendshoring and, most importantly, benefits American companies and consumers.

Can you discuss how the cost of congressional inaction to renew GSP impacts



American companies and how it trickles down to consumers?

Mr. Ferguson. Yeah. Each quarter that action on GSP is delayed, you know, we are carrying new expenses on the income statement. So, cost of goods sold go up and our ability to maintain profitability to invest in R&D, to invest in our workforce, to invest in expansion is compromised.

At the consumer level, you know, there is estimates that, you know, as a U.S. manufacturer is hit with higher fees -- and in this case the GSP total is \$2.5 billion owed to U.S. companies -- yeah, you can see two to three times markup at the retail level. So, each quarter, each year that this delay happens, you can see those costs being passed down to the front lines.

Chairman Smith of Nebraska. Thank you very much.

I now recognize the ranking member, Mr. Blumenauer, for any questions he might have.

Mr. Blumenauer. Thank you, Mr. Chairman.

I would just note that there is a difference between the authority of Customs and the ability. No one doubts that they have the authority, but with 2 million packages a day and climbing, they don't have the capacity to be able to do that.

And I would ask each of our witnesses to reflect on a question, and I will follow up with you, because there are currently discussions dealing with the debt ceiling that would actually make significant cuts in most of our budgets out of -- so reflect on the ability to be able to meet what you are talking about with a reduced budget for Customs and Border Patrol.

I really appreciate, Mr. Kanko, your observation about what you have been able to do with transparency and arguing that that ought to extend to air freight. There is currently a proposal to actually deny the transparency on ships via maritime.

If we lose that capacity, does that help or hinder the work that you do?

Mr. Kanko. If we --

Mr. Blumenauer. Is the answer to not have transparency for maritime shipping?

Mr. Kanko. If we lose access to maritime transparency, we will lose access to all transparency. That is the only transparency we have.

Mr. Blumenauer. Thank you. I appreciate that.

I want to turn, if I could, to Mr. Stumo. In your testimony, you talk about the unfair advantage the de minimus law provides for imports from China that may include goods made with forced labor, intellectual property.

Can you discuss the limitation of CBP's trade data regarding de minimus shipments?

Mr. Stumo. There is no data. Typically, customs, it is the owner or the customs broker. And customs brokers are trained in customs law. They are trained to know what is in the package, know what the HTS code is, and to make sure it all complies with our laws, pays the proper tariffs, that sort of thing.

There is no relevant data -- we don't have country of origin. We don't have the HTS code. All we know is a post office in China sent something, and it came over through postal here, and the postal guys are not a customs broker. If there is some information on the package, all we are doing is relying on them. It could be fentanyl. It could be something else. There is no data.

Mr. Blumenauer. Thank you very much.

Ms. Vandenberg, in your testimony, you point out the limited information that CBP collects from de minimus shipments hinders their enforcement of the Uyghur Forced Prevention Act. How can closing a de minimus loophole help CBP to better enforce the forced labor and other trade statutes?

Ms. Vandenberg. Closing the loophole would give CBP much more insight and much more transparency into goods that are coming in, and it would be much easier to stop goods made with forced labor and Uyghur labor from coming into the United States if that loophole were modified or closed.

Mr. Blumenauer. Thank you.

Mr. Chairman, I really appreciate the interaction with the witnesses. I think the testimony is extraordinarily valuable. I do hope that we reflect on what would happen on things that they are asking us to do if there are dramatic reductions in resources.

I hear from each of you there is more that you want done, and it is not going to be done magically with no investment. I think that is extraordinarily valuable.

I do appreciate the notion that there are areas -- for example, GSP, we passed GSP renewal. The only adjustment was having provisions dealing with environment and worker protection that are entirely consistent with what we passed in our revised NAFTA legislation that everybody on this committee voted for. So that was all that stood in the way of the enactment of what we have already passed. We agree with your point. We think the thing that we have offered up should not be controversial because everybody agreed with those adjustments that were in the revised NAFTA.

So, I am perplexed that GSP is being held hostage, because all we are doing is conforming to things that this committee has already approved. I appreciate you highlighting it. I hope that is an area that we can also work together in a bipartisan basis and solve the problem.

Thank you, Mr. Chairman, for this hearing. I found it very useful.

Chairman Smith of Nebraska. Thank you, Mr. Blumenauer.

I now recognize -- and I will say that we have two votes about -- well, two votes on the House floor. It is my intention to proceed through as many members as possible for

questions.

And pursuant to committee practice, we will now move to two-to-one questioning, beginning with the chairman of the full committee, Mr. Smith.

Chairman Smith of Missouri. Thank you, Chairman Smith.

Mr. Kanko, at a recent field hearing of the Ways and Means Committee at the Port of Staten Island in New York, we heard witness testimony about China's human rights abuses and the fact that products produced by Chinese forced labor still make it to the U.S. market.

What steps might Congress take to better enforce the Uyghur Forced Labor Prevention Act?

Mr. Kanko. Thanks for the question. Well, in my view, it all starts with transparency. And we are flying blind on air cargo data, which makes up nearly half of the value of the products being imported into the U.S. and, moreover, makes up a huge percentage of products, high-value products, that are associated with Uyghur forced labor.

So as resources might be reduced at CBP, that makes the case for transparency even stronger because the public sector has a role in that enforcement process and identifying suspicious shipments or potentially bad actors in the supply chain. And all we can see now is what is coming in by ocean. So, we have this bizarre distinction between ocean and air when it comes to transparency.

And so, my view is that that is a huge lever we can pull is by expanding transparency to air data and opening up visibility to everyone, not just the government, so we can see what is coming into the country and make decisions based on the facts.

Chairman Smith of Missouri. Thank you.

Mr. Ferguson, I would think it is safe to assume that outdoor sporting products were in demand during the pandemic. What did Vista Outdoors's experience tell you

about how broken supply chains can impact businesses? For example, how long did it take for a product to get from manufacturer to consumer during this time? And what has the company done to diversify its supply chains since the pandemic?

Mr. Ferguson. Yeah, great question. So, the outdoor industry, it is an \$862 billion industry. It grew tremendously during the pandemic, and we certainly were a beneficiary of that.

You know, we saw ocean shipping rates, you know, double, triple, quadruple. We utilized air freight more during the pandemic years than we ever have in the history of the company.

GSP has been an incredible tool for us to diversify away from China and to give us more exposure from different countries. And the challenge with the inaction on GSP renewal is, you know, our business units are making decisions for the next 3, 5-plus years and not knowing the future of GSP in this current environment, you know, leads them to wonder what is next. You know, what else can we do? Can these, you know, promises made, are they going to be kept or do we need to look for new solutions?

I think the CNL reform that I mentioned in my testimony, you know, being able to raise that threshold with inflation, will keep countries that have stood up a GSP capability, it will keep them in the program longer, which gives us the certainty, you know, that, again, our long-term planners need.

Chairman Smith of Missouri. So, Mr. Ferguson, we know countries like China abuse our de minimus trade policies in pushing their products to the U.S. market. What updates would you like to see to the current de minimus policy to avoid such abuse?

Mr. Ferguson. You know, our position is parity for U.S. FTZs. You know, there are 197 FTZs in all 50 States, and these are some of the most highly regulated entities in the country. And if we can make the decision that U.S. FTZs are a value-additive

capability for U.S. distribution, you know, we can funnel and put more of the shipments in a place that is regulated, that is overseen by CBP.

You know, when it comes to CBP resources, the burden is on the company to maintain your FTZ license. That requires us to check every box, dot every i, cross every t. So regardless of CBP funding, we are going to do everything we can to stay in compliance. And so, when it comes to, you know, forced labor, IP, illicit goods, FTZs is a very effective way to manage those de minimus shipments.

And for us it is a compelling value-add where we have an FTZ to correct an inverted tariff for kids' helmet manufacturing, but it can also be an amazing tool to expand our DTC capability if we had that parity.

Chairman Smith of Missouri. Thank you.

Mr. Stumo, I am sure you saw the bipartisan condemnation of the Biden administration's recent decision to enter into a critical minerals agreement with Japan. How does that agreement and potentially another one with the European Union keep America at a global disadvantage, particularly as it relates to our supply chains?

Mr. Stumo. Mr. Chairman, that agreement is -- I guess I am not prepared to answer that question here today for you, and I -- I am just not prepared for that answer.

Chairman Smith of Missouri. Okay. So I think something you might be prepared for, let's ask you on this. The Chinese Communist Party is always looking to circumvent and undermine U.S. trade policies. Can you specifically talk about how our current de minimus trade law can be utilized by Chinese companies to avoid additional scrutiny on imports or avoid tariffs altogether, including those in section 301?

Mr. Stumo. Sure. De minimus allows 2 million-plus packages per day into this country. Sixty-two percent are from China. It is an explosion of the number of packages. Shein and Temu exist solely because of de minimus. A lot of the packages are coming

into bonded warehouses in Mexico and Canada, and then are shipped from there into the U.S. There is no data that we know what the country of origin is of manufacture. We don't know what the HTS code is, which is the number that identifies what is in the package. All we know is it is coming in and it is represented to be under \$800. And by the way, that \$800 means the fair retail price in the country of origin, and the country of origin is China, which is a nonmarket economy.

So, everything is coming in through there. You can't -- CBP has allowed them to avoid 301 tariffs, our regular duties, our forced labor laws, and a host of other laws that you just can't figure out what is going on, much less the narcotics and the counterfeit goods and that sort of thing.

Chairman Smith of Missouri. So the White House's proclamation allowing imports of unfairly traded solar products from China into the U.S. was rejected by a bipartisan vote here in Congress, actually in this committee as well. Unfortunately, the President vetoed that effort.

What signal does the suspension of additional tariffs on China, when we know they are absolutely cheating, send to the Chinese Communist Party?

Mr. Stumo. It says that we will allow trade cheating, we want cheap stuff at any cost, we don't really care about forced labor, we don't care about dirty coal being used to make the panels that take 10 years of use to offset the dirty coal that went into them, and that we will allow them the Whac-A-Mole game of them to go to other countries once we find subsidies that allow them to circumvent.

And by the way, this 24-year moratorium -- and I know there is differences on this committee of those tariffs -- is not temporary. It is permanent, because they are building wafer plants there in order to comply and not be found to circumvent later. So we will get solar from those countries forever, not just temporarily. And, of course, they are building

in this country now too.

Chairman Smith of Missouri. Thank you, sir.

Thank you, Mr. Chairman.

Chairman Smith of Nebraska. Thank you.

I now recognize Mr. Buchanan for 5 minutes.

Mr. Buchanan. Thank you, Mr. Chairman.

I want to thank all our witnesses for being here today.

I want to talk a little bit about IP and the theft of our IP, the estimated close to \$300 billion to \$600 billion from the Chinese, and I am sure others as well. My thought is, what ideas or suggestions do you have that better enforce our laws and punish the bad actors?

And I will say, I was there 20 years ago in Beijing, and that was at the top of the list with the business group back then. And they talked about addressing it, and it was just -- to me it has just been a lot of conversation, nothing much has been done. In fact, I think it has got a lot worse in the last 20 years.

So, I just want to get your thoughts. You know, what would you suggest? What ideas, you know?

And, Ms. Smith, we will start with you.

Ms. Smith. Thank you. I think I would focus, having done a lot of work in this area at CBP, on the need to continue to partner with rights holders. They have the right expertise and the right focus, and the partnership between the government and the private sector to go after those counterfeit goods, I think, has been very productive in the past and should continue to be supportive.

With respect to the risk posed by small packages, I would recommend that we continue to focus on getting the right data on those small packages so that CBP and other



relevant agencies can assess the risk. And, in addition, CBP should have the authority to enforce laws on parties outside the United States.

Mr. Buchanan. Let me move on.

Mr. Kanko, do you want to add something, your thoughts to that? Because it is impacting a lot of jobs in America, and someone mentioned the income statements of a lot of our businesses, and it just -- you know, it is horrible, I think, and we have just got to figure out a better way of minimizing it.

Mr. Kanko. Yeah, great question. Many of our users are actually using the product to protect their American intellectual property. So, in 1996, Congress did pass the Anticounterfeiting Consumer Protection Act, and one component of that was opening up air data to public disclosure. Six months later, that piece was strangely neutered in the Technical Corrections Act. So, this has been on people's minds for quite a long time.

By opening up air data, these are high-value, you know, IP-protected goods coming into the country. Big brands and then little brands alike have a right and a reason to protect their IP. And by not seeing what is coming into the country via air, they have no idea what is coming and what is related to their trademarks --

Mr. Buchanan. I have got another question I want to get to.

Mr. Ferguson, you want to add anything to that, how that impacts -- you mentioned your income statement, I am sure the balance sheet as a result. But it is not just you, but a lot of companies across America.

Mr. Ferguson. I think upstream, you know, it is a regular part of business. You know, I look at our legal team and what they manage in terms of IP theft. It is a daily occurrence upstream. Downstream, I would stick to my testimony. GSP -- the onus is on the country to stand up capabilities that protect intellectual property. And I think the more we can flow the supply chain to GSP countries, we are doing ourselves a favor.

The same is true with FTZs. As I mentioned, those are highly regulated entities that have checks, balances, reviews --

Mr. Buchanan. I have another question.

Ms. Smith, I want to just come back to you real quick. In terms of digital trade flow, they are estimated at \$4 trillion this year, according to WTO, 80 percent growth a year. It seems like there is a lot of work that needs to be done in this space as well. People are very concerned about where we are at.

How do we get on top of this?

Ms. Smith. Sir, I would tell you not my area of expertise as CBP is focused on the physical goods.

Mr. Buchanan. Mr. Kanko, anything you want to add to that?

Mr. Kanko. Out of our scope.

Mr. Buchanan. Okay. Mr. Ferguson, anything?

Mr. Ferguson. Same.

Mr. Buchanan. Thank you. I yield back.

Chairman Smith of Nebraska. Thank you.

I now recognize Mr. Higgins for 5 minutes.

Mr. Higgins. Thank you, Mr. Chairman.

You know, something that is in all of our scope is that --dynamic of global trade has changed profoundly in 10 years. There was a time where, you know, the United States deferred to China to make cheap goods: T-shirts, toys, tennis shoes. Now in the age of technology and electric vehicles, things have changed profoundly.

De minimus is pertaining to minimal things. We are today dealing with very consequential things relative to our economic prosperity as a Nation, but also our economic security as well. And we are so dependent now on supply chains, as we have

learned, from, you know, the manufacturing of electric vehicles.

So, you are either the country that controls the supply chain or you are the country that is controlled by the country that controls the supply chain. And I would argue, right now, we are not the country that controls the supply chain.

So, you know, funding for Customs and Border Protection – under the debt negotiations, the potential is to reduce agency budgets that may result in Customs and Border Protection funding levels being decreased that would diminish the United States' ability to administer and enforce trade laws and protect U.S. workers in domestic industries from unfair trade.

There is a proposal for customs modernization. That plan for customs is the 21<sup>st</sup> Century Customs Framework. Obviously, a change to modernize the framework will cost a lot of money in terms of the implementation.

So, Mr. Stumo, you are chief executive officer for the Coalition for a Prosperous America. What are your concerns relative to the dynamic of those discussions today and the potential consequences as it relates to Customs and Border Protection modernization?

Mr. Stumo. We are focused on making it adventurous to invest, build here, employ workers here, and the customs – our borders with regard to goods, as has been mentioned, has become just lawlessness.

And so we have – we have to have the ability to enforce all the trade laws. And it is not just, you know, tariffs and 301 tariffs. It is consumer product safety standards that my members have to abide by, but the imports do not.

And you know, look at that number with 532 billion from China last year, plus the 188 from De Minimis. We are the bigger export market for them than the next eight countries combined, and how much of that coming back here could make us achieve 5 percent growth per year, 6 percent growth.

And it starts at the border. We can negotiate whatever we can in the trade agreements, but we have to have the data that we have to enforce against or – we have to have the ability to do that quickly without a two-year investigation that never happens.

Mr. Higgins. Chairman, I will yield back remainder of my time.

Mr. Stumo. May I add that Mexico by the way has air, land, and sea manifest transparency.

Chairman Smith of Nebraska. Thank you. I now recognize Mr. LaHood for five minutes.

Mr. LaHood. Thank you, Mr. Chairman. I want to thank all of the witnesses for your valuable testimony here today.

I wanted to talk about one particular topic here, proper enforcement mechanisms are a vital part of our U.S. trade policy. We have heard a little bit about that here this morning and protecting Americans from dangerous and illegal goods while still ensuring the flow of trade as efficient and effective and accountable. One important piece of the enforcement conversation is our reliance on goods coming from China.

And as we know, there are many bad actors that take advantage of the current system. As we consider policy solutions to strengthen our enforcement procedures, we need to simultaneously be thinking about our relationships with countries in the Indo-Pacific region, including Taiwan.

I would like to focus this morning on the recent U.S. TR announcement of, quote, early harvest negotiations with Taiwan, including a chapter on customs administration and trade facilitation. As a Member of this subcommittee and also a Member of the select committee on China, which is our bipartisan committee focused here in Congress on the strategic competition with China, it is clear to me that strengthening our trade relations with partners in the Endo Pacific region, including Taiwan, is going to be vital in the

coming years to decrease our dependence on China.

While I support efforts to assist in the development of the trade relationship, especially given the complexities of Taiwan's presence in the Indo Pacific and the looming threat of the CCP, it is vital that Congress plays an active and engaged role in the trade relationship.

Ms. Smith, are you generally familiar with the customs and trade facilitation chapters from past trade agreements, such as USMCA? And if so, can you speak to how some of the provisions may be meaningful to the Customs and Border Protection and its work at U.S. ports and to American exporters or importers?

Ms. Smith. Thank you for the question, sir. The customs and trade facilitation provisions in free trade agreements typically drive consistency in approach between the U.S. and its trading partners.

Free trade agreements that drive that consistency and drive uniformity, both in port procedures, customs clearance procedures, and in regulatory processes are tremendously useful to U.S. multinationals trying to do business in a consistent, harmonized fashion, and are helpful in terms of the customs conversation to support better enforcement and better facilitation.

Mr. LaHood. And from an enforcement perspective, can you share some of your thoughts on our trade relationship with Taiwan, and what that should potentially look like as we continue to consider ways to decrease our reliance on goods coming from China?

Ms. Smith. So, without specific expertise in Taiwan, I would tell you that having transparency and awareness of the requirements in Taiwan for U.S. businesses doing business there is a good thing and will help them make better decisions about where else to source goods as they look to diversify their supply chains.

Mr. LaHood. Thank you. Those are all my questions. I yield back,

Mr. Chairman.

Mr. Estes. [Presiding.] Thank you. And I will yield 5 minutes to myself for questions.

Thanks to all our witnesses for being here today. I am glad we are having two trade focused hearings this month as it demonstrates that Republicans really care about improving and modernizing the way U.S. engages in trade so that the United States can continue to be a leader, which is so important to so many workers, businesses, and families throughout the country.

Not only is U.S. trade leadership critical for the health of the American economy, we have also seen that if we, seed our leadership role, our adversaries like China step in. Unfortunately, we have seen absolutely no interest from the Biden administration to engage in trade issues as they treat trade as a second-class issue. While the United States should lead globally on trade, it is Congress who should be leading the way in shaping and advancing our trade practices and agenda.

Despite efforts from the Biden administration to try and circumvent Congress, it is the constitutional authority of Congress to lead on U.S. trade policy. I think of my Democrat colleagues would agree that a critical minerals agreement is not actually a trade deal, and that trade agreements need to be approved by Congress.

But given the debt crisis that President Biden is stumbling through, the American negative outlook on the economy, modernizing and updating customs policies and trade laws will be an important way to help fuel the economic growth.

As a Representative from Kansas' 4<sup>th</sup> Congressional District, I am honored to represent farmers and ranchers in Kansas. Ag is an important economic industry in my home state. Meat tops Kansas exports, and it is our number two overall export commodity for the state at more than \$2 billion in 2020. And in the United States, ag

exports hit \$196 billion in 2022.

I recently spoke with the Harvey County Farm Bureau, a group of highly motivated ag producers, and one of the counties in my district, who made it clear that market access is one of the keys to helping them thrive as well as trade enforcement and a robust workforce.

Ms. Smith, how will modernizing efforts support the trade efforts of farmers and ranchers in Kansas and across the country?

Ms. Smith. Thank you for the question. I believe that having customs regulations and procedures that reflect the way business is done by those ranchers and farmers who are looking to export and do it safely, securely, and compliantly is easier when the rules are clear, the rules are as streamlined as possible, and that they can also expect that the government will enforce the laws that protect them from unfair competition. I believe the 21<sup>st</sup> century customs framework proposals will do those things, and that CBP is looking to partner with Congress to make those changes.

Mr. Estes. Thank you. We have heard a lot about China today, its use of forced labor, and other human rights abuses. It is deeply troubling for all of us, even worse as China accumulates trade partners around the world. It will increase its use of forced labor to stay competitive and meet demand. If we want to counter China, we must compete from a position of strength.

One of the new bills that introduced with Congressman John Larsen would help us innovate and maintain global competitiveness and expand trade opportunities. The American Innovation and RD Competitiveness Act would restore immediate R&D expensing for American's innovators and entrepreneurs making it more favorable for businesses to make investments in research and development, and to keep manufacturing and production and jobs here in the United States. Producing more goods in the United

States will also lessen our need to rely on some nefarious actors like China. However, not all parts of every good can be sourced here.

Mr. Kanko, how can we increase supply chain transparency to help ensure that even if a product is made here in the United States, we can assure that none of the composite material or components are tainted or made with slave labor?

Mr. Kanko. Great. Yes. Thank you, Representative.

Well, by opening up the airman manifest data, domestic manufacturers will be able to see, first, who's importing products similar to what they manufacture. You start with that in terms of, you know, benefitting the American manufacturer. Once they understand who's consuming products that they make, I think now more than ever, there is a good economic mathematical opportunity for the local supplier to take that business away from the foreign supplier, and only with transparent import data can you see the full picture of who is doing what.

Same for various subcomponents of a product. If your supplier is another American company, and they are bringing in part of their supply chain from China or anywhere else, you wouldn't know that now without access to air data. So by complete manifest transparency, you will have access to this valuable information and have a better understanding of what components are coming from where.

Mr. Estes. Thank you. And Mr. Ferguson, would you like to add anything?

Mr. Ferguson. Yeah. So we are manufacturer in the U.S., and we make Stone Glacier backpacks in California, we make fishing weighters for simms in Montana, and other holsters and things, and I can tell you the amount of time our compliance team spends in sourcing the source of some of our supply is quite intense, so you talk about the R&D expensing.

I also think if we had better supply chain transparency, that generates savings by



time not spent by the compliance team, you know, running down this information that could be readily available otherwise. So you kind of have this double effect of becoming more efficient, efficiencies get put back into product, innovation, supply chain diversification. It is a true win-win.

Mr. Estes. That is good. I mean, that really is part of the goal of how do we be productive and how do we be competitive, which is really what a free and fair marketplace is about, and what we want to do.

So thank you. My time has expired. We are in the middle of votes. There are a couple of votes that we are taking this morning. So I am going to recess the committee, and then we will come back after the second vote is finished and take this back up again. I know there is some more questions from all of my colleagues here. Thank you.

I will recess temporarily.

[Recess.]

Chairman Smith of Nebraska. The committee will come to order. Next, I will recognize Mr. Panetta for 5 minutes.

Mr. Panetta. Thank you, Mr. Chairman, and thank you to our witnesses. Appreciate you allowing us – indulging us to go vote, so appreciate that break.

This, obviously, is an important hearing because customs policy is important as all of you know, and I think you are getting the sense that all of us up here believe as well. We need it to ensure that we are properly inspecting imports and for reducing forced labor in our supply chains and the products Americans use and consume every single day.

To that end we need visibility into our supply chains, and not just for CBP, but there are outside stakeholders who are also here to help CBP, by using trade data to investigate supply chains that may include forced labor and we must include their voices in that process. So, I am glad they are represented here as well.

Now, obviously, one of areas of forced labor has to be in the realm of illegal, unregulated, and unreported fishing, which happens, as many of you know, on the high seas all around the world, and really taints our supply chains. Even worse, it facilitates like I said, forced labor, especially for migrant worker, and there is little oversight of many vessels engaging in IUU fishing.

Ms. Vandenberg, what actions would CBP take right now to increase costs for companies that import seafood that engages in IUU fishing or forced labor?

Ms. Vandenberg. Thank you, Congressman Panetta, for this question. It is really excellent. I think there are two things that could happen. One is, we need more withhold release orders. There are petitions pending. We need withhold release order on IUU fishing issues where there is forced labor in that supply chain. The second point I would make is that we have called for additional findings by CBP, which is a higher standard.

We have asked for additional findings, and we have also asked CBP to fine companies that are importing goods made with forced labor into the United States. To date, there has only been one fine. It was quite low. We would like to see far more fines in order to make this less profitable.

Mr. Panetta. And is there anything that Congress can do to make CBP -- anything that we can do to help crack down on bad actors?

Ms. Vandenberg. Congressman, I think this is all a question of resources. This is not the time to obliterate the CBP budget for forced labor enforcement. It is time to increase it. Because I do feel that with increased resources they would be able to crack down more.

Mr. Panetta. Thank you. Moving from sea onto land. Obviously, there are illicit drugs that cross our border, especially through ports of entry. Now, obviously, there aren't packages that are marked that they contain deadly drugs, and they need to be screened.

But we cannot as we are learning and as we know, we cannot screen every package. So, we need to get smarter about where drugs are coming from and where they are going.

Mr. Kanko, how can additional transparency help outside stakeholders track potential drug shipments and help prevent the illicit drug trade.

Mr. Kanko. Great question. And we are working on some stories with the media on this exact issue right now. Of course, packages don't arrive with a loud sign saying fentanyl, but fentanyl precursors for example, which consist of quite a number of chemicals which are always changing, you know those are typically labeled with some honesty. Most of that comes in by air.

So, we see none it now. None of that is available to the public. But having access to air data being able to see the flow of these fentanyl precursors, not all of which of course are going into fentanyl, many of them are used for benign purposes, but having better eyes

on what universe looks like, and from there being able to tease out the suspicious shipments that would be a massive benefit of having access to air cargo manifest data.

Mr. Panetta. Thank you. And I have got one more area I want to hit on, and Mr. Kanko I am going to go to you. Obviously, we have hit Russia with severe sanctions. However, without being able to track supply chains, we won't know who is abiding by those sanctions and who is. How can trade data transparency help us track who is abiding by those sanctions policies, and who is violating them?

Mr. Kanko. One simple answer would be, what we would do or what users of our data would do is watch for spikes in categories of products that are against the norm. And when you see a pattern like that, the next layer of analysis would be, you know, is this behavior happening to circumvent a typical trade flow between a sanctioned country or a sanctioned product category to get around that and still accomplish the end point delivery. So, trade data can be used in any number of ways to find sanctions' violators, and we recently helped expose some of that.

Mr. Panetta. Great. Thank you to all the witnesses. Appreciate it. Thank you, Mr. Chairman. I yield back.

Chairman Smith of Nebraska. Thank you. I now recognize Mrs. Miller from West Virginia for 5 minutes.

Mrs. Miller of West Virginia. Thank you, Chairman Ship -- Smith. Sorry. And thank you all for being here today. A lot has changed since we obviously passed the last customs modernization bill. And I really view in my job here is to ensure that the United States companies can be competitive in the global market.

We have got to empower American ingenuity here in Washington, but not dampen it with all of the outdated rules and laws that we are finding. From a time that was largely pre-internet, the way we trade with our partners has changed drastically.

I know we have discussed that for the last hour. And we need to make sure that our agencies have the tools that they need to hold China and other bad actors accountable, collect required duties, and ensure that the goods that are made with slave labor and human right abuses do not reach our market.

Mr. Ferguson, as an apparel and recreational goods manufacturer, I am sure you source products and inputs from all over the world. Can you explain the importance of the GSP and how it plays for your company, especially when attempting to build supply chains outside of China?

Mr. Ferguson. Yeah. GSP is critical. The financial reward that our teams can realize from utilizing GSP are material, and it is enough to stand up new supply chains, to leave supply chains that our teams have developed over decades in China, but it is worth it.

But the key is the promises made, you know, will promises be kept? And thus far, \$2.5 billion are still hanging out there that we have to carry on our income statement of quarter after quarter.

I think, you know, one point that is a positive data point since travel goods were added to GSP in 2017, \$5 billion has migrated out of China. So, I think there is a lot of compelling points that support that GSP works, but for our teams that are thinking in 3 and 5-year chunks, you know, we need certainty on GSP. And right now, that certainty is in question.

Mrs. Miller of West Virginia. That is so often what I hear from businesses, is they just want certainty.

Ms. Smith, our country is facing a challenging economic climate, and I am concerned about raising any taxes on small businesses and consumers who are already having trouble buying everyday goods and services.

While there has been controversy surrounding this topic, can you explain your

perspective on how the elimination of the De Minimis threshold would have impact on the overhead for small businesses and how those costs are passed down to everyday customers, consumers who are already struggling with inflation?

Ms. Smith. It is a wonderful question, and it really exposes a fairly complex dynamic. The rise of ecommerce has really been a boom to small and medium sized businesses, and has really driven tremendous economic prosperity in a particular segment of the market.

I think one of the things that the government can do working to support small, medium sized businesses is to make sure that processes are streamlined and clear so that the business that they are conducting is compliant, it is safe to consumers, but it also allows them to earn a living.

Mrs. Miller of West Virginia. Of course, so many of us have already today talked about the current De Minimis threshold as a loophole. Is there anything that you want to add about that, about the Chinese companies taking advantage?

Ms. Smith. Earlier, I referenced the need for the right data from the right parties, and I think in the De Minimis environment, one of the reasons that CBP and the other regulatory agencies are somewhat blindfolded is because they don't have the right data from the parties in the supply chain.

I think that is absolutely critical, and I think the other thing and it has been talked about a number of times today is that CBP have the resources to enforce on that huge tide of small packages.

Mrs. Miller of West Virginia. Yes. Thank you so much.

Mr. Kanko, last year Congress appropriated over a hundred million to Customs and Border Patrol to implement Uyghur Forced Labor Protection Act. Do you have views on how the CBP could better work with private industry to ensure that forced labor products

never enter the U.S.?

Mr. Kanko. Sure. Well, as you know, oftentimes enforcement actions actually start with a tip or an insight from the public sector. And oftentimes, that comes from manifest transparency of which we can only see ocean shipments at the moment.

So, by expanding trade transparency to include air, you will essentially double the amount of shipments that are now visible, and the public, NGOs, the media, businesses, can scour that data and find clues and bring those, surface those to law enforcement, including CBP who can then identify the more suspicious looking shipments and investigate take action.

I have seen that happen time and time again where an enforcement action starts with the public side and what does the public have access to? Only publicly available data. So I think transparency is one answer there, and it is a big one.

Mrs. Miller of West Virginia. Thank you. I yield back.

Chairman Smith of Nebraska. Thank you.

I next recognize for 5 minutes Mr. Smucker from Pennsylvania.

Mr. Smucker. Thank you, Mr. Chairman.

Mr. Ferguson, I enjoyed hearing about Vista and heard some of the problems you are faced with with De Minimis, particularly with an FTZ. Recently, I had heard from a Pennsylvania company that is in a very similar circumstance, and that is David's Bridal, which has traditionally been sort of a brick-and-mortar company where a bride can go in and try on the dress, and touch it, and feel it. And they are faced with, you know, all of the same market factors that brick-and-mortar companies are faced with today, where more and more is going online and so on and so forth.

But they also have the FTZ issue, which really puts them -- and the De Minimis, which puts them on a -- on a level playing field with companies from China, which is their

primary challenge and primary competitor. So I think in a lot of ways, it is similar to what you have experienced.

And again, you know, I think we have got to innovate to meet the market, but you know, it would be sad to see a company like David's that still is important to many brides not be able to operate any longer.

And particularly, if it is due to our laws making it easier for a company from China to sell directly to consumers. And so, the other thing I wanted to ask you about, you know, they have another issue where a lot of their products are just simply copied by foreign online retailers, and they have even told us that it goes as far as they will put a marketing piece online, and that same day, it shows up on another site, the exact work they have done in a marketing piece.

Wondering if you have had experience with sort of your brands in that regard, and if so, what recourse do you have through CBP to prevent that ripping off designs or marketing and so on from entering in the market first place?

Mr. Ferguson. Yeah, we do. You know, we are the largest helmet company in the U.S. We operate through Bell Helmets, Giro, and Fox Racing. Any of the helmets that you see that have Minnie Mouse ears or, you know, a dragon tail, those are also our helmets.

Now, when those products are ripped off, not only is it financial hit, it is a safety issue in major ways because helmets as simple as they may look are extremely engineered, a lot of innovation.

And so, I guess, my first answer is, it is our legal team. I mean, they are the ones who are going to pull the levers to fight that fight through the legal system, both U.S. and foreign. You know, there is different mechanisms to file grievances and complaints to CBP, but it has got to be kind of an all hands on deck situation.



But back to the FTZs, I just think there is an amazing opportunity to make the very simple decision that ecommerce distribution can be more concentrated in the United States by bringing parity to FTZs. And through that, every FTZ, you know, has an exhaustive licensing requirement, oversight process, integration with CBP that inevitably can fix and create these issues of illicit goods, IP issues, compliance. So, I think that has to be part of the solution as well.

Mr. Smucker. Yeah, I agree. It is a compelling argument. It is a change that I think we need to make. So hopefully, we get that done.

I wanted to go to Ms. Smith very briefly. As we consider customs modernization legislation, I am just curious to get your practices -- or get practices that we can borrow from our trading partners on customs facilitation. For instance, Mr. Stumo's testimony included a recommendation to borrow from Mexico's shipment transparency requirements. And I also know some of our partners, for instance like Singapore, are almost entirely automated in their port operations.

And so, during your tenure at CBP, which partners stood out for having some of that cutting edge customs facilitation practices, and what were some of the practices that we can potentially adopt?

Ms. Smith. Well, I like to think that here in the U.S. we actually are one of the world leaders. But we did work with many countries around the world, Singapore comes to mind, our border five partners, Australia, New Zealand in particular, were great partners, but also had some good ideas for us to work with.

I think the idea that we leverage trusted traders, those of us that have invested heavily in compliance, we are good corporate citizens, and can, in fact, be compliant is something that the government needs to recognize and leverage.

Mr. Smucker. Thank you.

Chairman Smith of Nebraska. Thank you. I now yield 5 minutes to Mr. Kildee.

Mr. Kildee. Thank you, Mr. Chairman, for yielding and for holding this important hearing.

Look, forced labor, a term which is really a euphemism for modern slavery is far too prevalent, but it is not just detrimental to the people that are impacted by it, those who are exploited, but it undercuts American workers, undercuts American companies. I have been focused on this and want to continue to work to make sure that we are effectively enforcing against this.

I happen to represent a company called Hemlock Semiconductor. They make polysilicon, a base material for solar panels, but also for semiconductors. And for years, Hemlock Semiconductor was losing market share to Chinese companies. They shuttered a multibillion-dollar investment in the U.S. even before it was operational because they could not compete with slave labor.

Working with NGOs and human rights organizations, we provided information to CBP, my office, showing U.S. workers and domestic companies that were manufacturing polysilicon were being undercut by forced labor in Xinjiang Province. Knowing this information, I worked with my colleagues on this committee to encourage a withhold release order, a WRO, even with the overwhelming evidence, which was just right in their face. It took CBP almost a year to issue that WRO for polysilicon, which is way too long.

Once it was issued, we saw an immediate increase in demand for polysilicon from domestic production, particularly from the people I represent, hundreds of workers had their jobs restored. So, starting with Ms. Vandenberg, I wonder if you can talk about how we can improve the use of civil society organizations and their involvement with CBP to remove forced labor from our supply chains.

Ms. Vandenberg. Thank you, Congressman Kildee. It is an excellent question. I

would start with cargo transparency because nongovernmental organizations often at great risk to themselves do these investigations abroad, but we can only see what is coming in on ocean freight. We cannot see any of the other modes of transportation. And so, it undercuts our ability to do the kind of petitions that you and your colleagues did in the polysilicon case.

The second thing I would say is that there needs to be keeper adjudication. We have CBP looking at petitions for far too long. There needs to be quicker adjudication of all of these petitions so that the withhold release orders can be enforced.

Mr. Kildee. Thank you. I think also, just since the passage of the Uyghur Forced Labor Protection Act, polysilicon products from Xinjiang are technically banned from the U.S., unless it can be proven that they are not made with forced labor. We are concerned, many of us, that there is still polysilicon connected to Xinjiang entering the U.S. We have also heard similar concerns about textiles being made in Xinjiang using the same sort of forced labor entering the U.S.

So, I wonder, Ms. Vandenberg, if you might comment on what CBP can do better? And I know resources, you mentioned that in response to Mr. Panetta's question, resources are one aspect of it. Is there anything else we should be encouraging, and Ms. Vandenberg, you could offer a comment and then Mr. Stumo if you might comment as well?

Ms. Vandenberg. Absolutely. We are all concerned that the entity list for the Uyghur Forced Labor Protection Act is so short and truncated. Dr. Laura Murphy has done enormous amounts of research on companies that should be on entity list, which have not been not added.

So, we would ask that CBP increase that list to better reflect companies that have tainted forced labor from the Xinjiang region.

Mr. Kildee. Thank you. Mr. Stumo?

Mr. Stumo. Forced labor in China is unique. It is state sponsored by Beijing. It is genocide, which has been found by two administrations, and all although the labor -- the labor transfer program, the poverty alleviation program, all the sub parts are by Beijing. This is not something where forced labor is in the out shirts of an economy and they just failed to stamp it out.

For the Uyghur Forced Labor Protection Act -- the UFLPA for the goods with an origin of China should be presumed to be forced labor overall and then have a licensor to show that they are not. It is very hard -- enforcement is so slow, as you have said, and even improving it is fantastic, but it is too slow. They move very rapidly, there is a very high volume.

Mr. Kildee. I appreciate it. And I know we don't have time for it perhaps right now, Mr. Stumo, if you wouldn't mind sharing with my office some of the information that you made reference to. I have concerns about the 24-month pause on the solar tariffs. You mentioned, as I have felt for a long time, this is not 24-month problem. This has a long-term implication, and I certainly want to have as much data as possible to make that case where we can. So I appreciate the opportunity to speak further on that.

Thank you, all, for your testimony.

Chairman Smith of Nebraska. Thank you. I now recognize Dr. Murphy for 5 minutes.

Mr. Murphy. Thank you, Mr. Chairman. And thank you guys to the committee for sticking it out on a fly-out day when we have votes and everything. Your input is deeply, deeply appreciated.

You know, as I sit in Congress more and more and more and talk with individuals, it is an absolute statement I think that can be made is that we are at war with China. The

only problem is they understand it, and we don't. And we are allowing their practices -- their forced labor practices, their cheating at trading to undermine this country's national security, and we support the human rights abuses.

I really wish, and I have said this many, many times, that we need to divest out of China. I think our colleagues and universities who pushed 5 years ago, 10 years ago to divest out of fossil fuels should have the same moral outrage to divest out of China and stop their murderous, and in fact, murderous practices and cheating and undermining the freedom of our society. I don't understand why we don't do this. So anyway, that is a little bit off my hinge.

So, our trade policy and supply chains have come under increased focus during the pandemic. I mean, we saw that exploited especially, I will just take a little sidetrack, especially in medicine. We have two-month supply if god forbid we get blocked off from China. Two-month supply. We don't know what is coming from China because our FDA is not looking at it. We are getting generics across this country that have not been inspected by our own FDA.

Yesterday, we voted to override the President's veto on the CRA that would have prevented the Biden administration from waiving tariffs on the Chinese solar panels. Sadly enough, we were not successful. I personally think we are giving, again, giving the kitchen sink to China.

Mr. Stumo, what type of message do you think it sends both to domestic manufactures as well as the Communist Party because they are watching everything we do, that President Biden is declaring an emergency declaration even though his own Department of Commerce showed that China was cheating our laws to the detriment of the United States worker?

Mr. Stumo. Of course, it shows that we are just not serious about our trade laws,

we are not serious about building back better. As you know, Mr. Congressman, one of our chief geopolitical rival in the 80s, Ronald Reagan asked that the Soviet Union determine that he needed to cut off trade in capital markets, so we were not funding the Soviet Union's geopolitical aims.

And by cutting them off from the financial markets, as you mentioned before, which we provide about 2 or 3 trillion to China through their integration in our financial markets and our pension funds, as well as our goods trade deficit, which is not just 320 billion a year, but it is another 188 because of De Minimis, no one else in the world funds China like we do, nowhere close.

The Europeans don't. The Japanese don't. The Germans, nobody. It is us. And we have to -- for all our talk, we are building their military and we are building their ability to invade Taiwan. And it is because we can't figure out that we need to build and make stuff here and employ our people and get our profits.

Mr. Murphy. I think, you know, in the all mighty pursuit of everything green, we are willing to do exactly what you just said with China; build their military, build their infrastructure for an incremental change in NeCO2 emissions while they build two new coal plants a week. I mean, again, on every single front --

Mr. Stumo. We do it greener than they do.

Mr. Murphy. Right. And I just don't get. Why are we now basically supplanting the economy of our world's greatest -- and I am just going to say -- flat out enemy? We just don't have a ballistic war yet, but we are seeing everything else.

Mr. Kanko, I will try to hurry up -- to what degree can Import Genius help detect future incidents of countries circumventing tariffs by sending products through other countries? We know this is an extensive problem. How can we help? How can we stop it?

Mr. Kanko. The more transparency the better. We do collect manifest data from a number of countries, not just the U.S., 17 countries now. So you can, sometimes fairly often, connect the dots when a shipment is taking circuitous route to the ultimate destination, and you can detect, you know, circumvention efforts that way.

But the more countries the better, and the more transparency per country, the better. The thing we can do here is open up access to air data, which will double the visibility for United States, shipments coming into United States.

Mr. Murphy. Thank you. I will just make one more statement with the whole De Minimis argument, guys, we are talk about the opioid epidemic and the absolute war China, again, has created on our streets killing 110,000 Americans last year.

All these things that are getting under \$800, and there is no way they can be inspected, this is an absolute portal for the illicit fentanyl to come into the country. We have to stop that. So thank you, Mr. Chairman. I yield back.

Chairman Smith of Nebraska. Thank you. I will next recognize Mrs. Fischbach for 5 minutes.

Mrs. Fischbach. Thank you, Mr. Chair, and I appreciate you all being here. And like, everyone has said, kind of putting up with our weird schedule, so I appreciate that.

Mr. Kanko, in your testimony, you mentioned the bipartisan moving America's Privacy Prevention Act, which recently passed the Senate through unanimous consent. I would like to submit for the record a letter from the lead cosponsor in the House of this legislation, Congressman Michael Waltz from Florida.

Chairman Smith of Nebraska. Without objection.

Mrs. Fischbach. Thank you. And I don't know if you are familiar with the bill, but if enacted bill, this bill would help reduce the risk that personal information, such as social security and passport numbers would be inadvertently disclosed amongst

# Congress of the United States

## Washington, DC 20515

May 22, 2023

The Honorable Jason Smith  
Chairman  
Committee on Ways & Means  
1139 Longworth HOB  
Washington, D.C. 20515

The Honorable Richard Neal  
Ranking Member  
Committee on Ways & Means  
1129 Longworth HOB  
Washington, D.C. 20515

The Honorable Adrian Smith  
Chairman  
Subcommittee on Trade  
Committee on Ways and Means  
1139 Longworth HOB  
Washington, D.C. 20515

The Honorable Earl Blumenauer  
Ranking Member  
Subcommittee on Trade  
Committee on Ways and Means  
1129 Longworth HOB  
Washington, D.C. 20515

Dear Chairman Smith,

I am writing in support of the bipartisan H.R. 1568 the *Moving American's Privacy Protection Act* to require U.S. Customs and Border Protection (CBP) to remove personally identifiable information (PII), which includes Social Security and passport numbers, from cargo manifests before public disclosure. This legislation passed the Senate by unanimous consent on March 9<sup>th</sup>, 2023.

Currently, CBP requires manifest sheets, which includes PII, in order to disclose and document the cargo of incoming vessels for customs and security purposes. In 1984, the public disclosure of certain manifest information was required. The original intent of this provision was to increase competition, to facilitate better public analysis of import trends, and allow port authorities and transportation companies to more easily identify potential customers and changes in their industries. However, in recent years, PII of relocating individuals has been released, enabling identity theft, credit card fraud, and unwanted solicitations.

The personal information of every American should be safe and secure. However, due to the current public disclosure of cargo manifests, our service members and their families experience a higher risk of identity theft and fraud as they move abroad in service to our Nation. It is critical we take the necessary steps to protect them against dangerous and fraudulent activity. The Moving American's Privacy Protection Act would help to protect the private information of our service members and all Americans. I hope that your committee sees the need for this change and will pass this important legislation to protect all Americans.



In Service,

A handwritten signature in black ink, appearing to read "Michael Waltz". The signature is stylized with a large, looped "M" and a "W" that extends into a long, horizontal stroke.

Michael Waltz  
Member of Congress

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The Honorable Jason Smith  
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1129 Longworth HOB  
Washington, D.C. 20515

Dear Chairman Smith,

I am writing in support of H.R.529 *the Extending Limits of U.S. Customs Waters Act* to extend the customs waters territory of the United States from 12 to 24 nautical miles from the baselines of the United States.

This bipartisan, bicameral bill would update several existing laws and extend the United States' contiguous zone from the 12 nautical mile limit of the U.S. Customs Waters to 24 nautical miles. By extending jurisdiction into the near shore waters and doubling the area of operation, Customs and Border Protection's Air and Marine Operations (AMO), United States Coast Guard (USCG), and other federal authorities can properly enforce U.S. customs, fiscal, immigration, and sanitary laws at sea. International law recognizes that coastal nations, like the United States, may establish such a contiguous zone beyond its territorial waters. AMO remains limited to exercising its authorities to the 12 nautical mile limit of U.S. Customs Waters, with few exceptions.

The USCG and NOAA have adopted these extensions several years ago and have been using the authorities as intended. The U.S. Customs Service, having a very small marine program at the time of these proclamations, did not pursue the effort to adopt or seek inclusion within Title 19.

With modern technology improving the performance and speed of maritime vessels, including those used to violate U.S. law or evade law enforcement, limiting AMO operations to 12 nautical miles puts responding law enforcement vessels at a significant disadvantage. This often prevents the interdiction of vessels in time to prevent their escaping capture. Extending AMO authorities to operate out to 24 nautical miles would increase detection, interdiction, and ultimately prosecution of those who are attempting to bring illegal cargoes (for example, illegal narcotics

and human trafficking victims) into the nation. Having the authority to operate against these threats out to 24 nautical miles would increase the likelihood of successfully preventing illegal smuggling, unsafe entry, or other violations of U.S. law. Extending our law enforcement authorities out to the 24 nautical mile limit of the contiguous zone is crucial for AMO.

*The Extending Limits of U.S. Customs Waters Act* will allow U.S. Customs and Border Protection, Air and Marine Operations and the U.S. Coast Guard the jurisdiction necessary to keep American families safe from drug and human traffickers. This legislation is mission critical to protect American families and is crucial to stopping the flow of illegal immigration and deadly drugs like fentanyl into our country. I respectfully ask that your committee fully consider the U.S. Customs Waters Act.

In Service,

A handwritten signature in black ink, appearing to read "Michael Waltz", with a stylized flourish at the end.

Michael Waltz  
Member of Congress

commercial trade data.

Can you explain to me how private information ends up in the hands of the data companies like Import Genius, and how this bill can help?

Mr. Kanko. So, it is a bit of a messy process the way the data is currently collected and disseminated by the government, by customs. We do the best we can to create algorithms that detect and automatically suppress shipments that might of a personal nature and might reveal some personal identifiable information, and our competitors, the good ones, do that as well.

But it is much more efficient and much more thorough to have that process done at the government level. And so, we fully support that bill. Occasionally, personal shipments do get caught up in the commercial dataset. It is frustrating. That is not what I mean when I say transparency. We don't want to or need to see those personal shipments, and we fully support that effort.

Mrs. Fischbach. Thank you. And now shifting gears a little bit, you mentioned transparency. The CBP plays a critical role in both the prevention of and the response to foreign animal diseases. Interfacing with the USDA on biological threats to our agricultural sector. In your testimony, you mentioned case examples of Import Genius helping to identify and track contaminated agricultural products throughout the supply chain.

Do you believe that increased transparency in import data will help CBP better protect our domestic industry from -- in this regard?

Mr. Kanko. Absolutely. I mean, once you have some clues, you use trade data, you work backwards from the clues and look at trade data to see where similar products may have also been recently shipped, and that can allow you to actually intervene and almost in real time and make a difference in the outcome. Can't do that by now if it came

in by air.

Mrs. Fischbach. And you know, because animal disease outbreaks affect American farmers' ability to export their products around the world, do you agree that this increased transparency will have an added effect of not just protecting our domestic industry, but also helping to protect American access to export markets?

Mr. Kanko. Clearly. Absolutely.

Mrs. Fischbach. Thank you very much, and I will yield back.

Chairman Smith of Nebraska. Thank you. I now recognize Mr. Kustoff from Tennessee for 5 minutes.

Mr. Kustoff. Thank you, Mr. Chairman. And thank you to the witnesses for appearing today.

Ms. Smith, if I could with you, first of all, thank you for your long public service to our nation. It seems to me that we have all talked about this, that CBP is governed by very few timelines when it pertains to responding to certain inquiries, such as petitions and protests from stakeholders or customs rulings, penalty determinations. Seems to me that that has real world effects that really can cause something.

I think without a doubt it does create uncertainty for our businesses logistically for planning purposes. In your opinion, should the CBP be subject to stricter requirements for timelines for responding to certain trade actions and inquiries?

Ms. Smith. Thank you for the question, Congressman.

As a former government official, I recognize my responsibility to be responsive to the American public. Having quick service, responsive service is very important, but I also recognize that asking for faster service means that you put more resources on that particular issue. If you don't have the resources, you are trying to squeeze blood from a stone, and I think it is a matter of priorities.

And if, in fact, it -- while CBP meets many deadlines with the Enforcement Protect Act, with their rulings, benchmark, and other things, I think it is incumbent upon both the Congress and other stakeholders to communicate to CBP what the priorities are.

Mr. Kustoff. Fair enough. Let me ask you this in a broader context. During your time at CBP, can you think of any specific situations where the lack of a required timeline or deadline caused problems, that there wasn't a defined timeline?

Ms. Smith. None come to mind, but what do come to mind are the multitude of cases where there are requirements around timelines, whether it is enforcing antidumping and countervailing duty orders, running the Enforce and Protect Act evasion process, issuing the multitude of less complex rulings.

I do know that having new timelines mandated by legislation does put a significant amount of pressure on the agency, but it also in the Enforce and Protect Act case did have the desired result.

Mr. Kustoff. Let me -- one more question on that line. Would stricter timelines for CBP, could it prevent supply chain disruptions and bottlenecks? Would it help, or would it alleviate it?

Ms. Smith. So, I think having additional predictability is always helpful to the private sector, something that they can count on. I am not sure that it would resolve supply chain congestion.

Mr. Kustoff. Okay. Let me ask you, that CBP for several years has proposed legislation to establish a new global trade specialist, a position within the agency. In the last Congress, both the Senate and the House passed bills to grant CBP this authority. It was not enacted into law.

Couple questions: One, are you familiar with the proposal? And if you are, could that change be useful to improve CBP's enforcement efforts?

Ms. Smith. Absolutely. I am both familiar. It actually developed under my watch, so I am a huge supporter. I think any time we can invest in your trade personnel, particularly the non-uniformed trade experts; the attorneys, the auditors, the analysts that do a lot of the customs compliance work, is absolutely critical. Global trade specialists allows the agency to hire and recruit and retain for modern skills like analytics, the management of data, things that are critical tools in good trade enforcement and facilitation.

Mr. Kustoff. Thank you, Ms. Smith. Mr. Chairman, my time has expired. I yield back.

Chairman Smith of Nebraska. Thank you. I now recognize Mr. Moore from Utah for 5 minutes.

Mr. Moore. Thank you, Chairman. Thanks for keeping us on time. Thank you to the witnesses for being here.

I appreciate Ranking Member Blumenauer's comments at the first. You highlighted some of the statistics on the burden of what we go through with our customs protections and the work that you to. It is a great -- and it is a tall order. I think we all recognize that, and as with the globalized economy, we are required more and more from CBP than ever before. Then add the pandemic. So, this is a big, big task, and I think we all understand that.

In Utah, we are innovating to maintain our place as we call ourselves the crossroads of the west. Trade matters to us, efficiency matters to us, and we are pushing really hard to execute a bold vision to establish an inland port authority, and it has been a big undertaking.

And I want folks from -- anybody -- any stakeholder involved with this to recognize there is big problem, there is a huge task ahead, and we are trying to do it the

most efficient way possible. Maybe sometimes operating as usual isn't the best way to go forward. Think big, think outside the box. And you know, Utah has always tried to be a part of this.

We are very proud to represent Box Elder County in the 1869 completion of Transcontinental Railroad, where they drove the final golden spike, right? And that matters to our community, and we are trying to add to the nation's problem here and really fix this issue.

Question for Ms. Smith, as we look -- this committee looks for ways to modernize, do you believe that inland ports meet our objectives, our shared objectives, to improve trade facilitation minimize supply chain bottlenecks and even interact in the future with China and holding them accountable, is this a feasible path we would be considering this?

Ms. Smith. Congressman, I think it is a very interesting suggestion. I think any time that you can locate a government service close to its constituents is probably a good thing even with the events as we have had in working remotely. One of the challenges I do believe in establishing new ports or new places for CBP to be is not only having the resources, but also having the infrastructure to support.

And so, it does come back to not only the bodies, well trained and present, but also the information systems, the building that have to be there as well.

Mr. Moore. And as I have been close to this, you have actually answered my second question and highlighting the unique need. As I have been close to this, that is Utah's concern. We are focused on making sure that we have the proper infrastructure and building it into a strategic plan that works. So, I just wanted to use it as an opportunity to highlight we have a massive problem as the Ranking Member highlighted as well, and I agree with, and this is a significant step in the right direction on solving some of this. And so, thank you for that, and look forward to continuing to work together.



Mr. Ferguson, we got a minute and a half here to solve a very big issue with some questioning. It is great to see you. You have done work here before. You are familiar with Capitol Hill. Please feel at ease to answer this question candidly. Do you feel like sometimes we talk big, and we don't always put action towards something?

Mr. Ferguson. Perhaps.

Mr. Moore. We do. GSP is an opportunity for us to follow up on what we are trying to do. Everybody knows, and every thought --- every thought player, every stakeholder, every Member of Congress, every international trade expert, they recognize that, you know, we are going to have strife with China going forward. It is going to continue. We saw what happened in the pandemic. This is not something that we can just bury our head in the sand and deal with.

So, the main two thoughts on this is how in the world as a nation do we de-risk from the potential looming threat particularly in the South China Sea and the Taiwan Straits? How do we de-risk, and also to what extent do we de-couple? There is different thoughts about de-coupling. But everybody agrees we need to de-risk.

In order to de-couple smartly, we have to incentivize other partners to provide goods and services to our nation. We can't survive without it.

Is GSP a good opportunity to meet that objective, and do you have anything else that is that actionable as far as like GSP?

Mr. Ferguson. It is a great diversification tool. And since travel goods was added to GSP in 2017, there has been \$5 billion migrated out of China. And so, there is no shortage of ideas. There should be more ideas, but this is something concrete. It is at our fingertips, and let's invest in it, and let's create certainty and make this a program that the private sector can plan on, not only just for the upcoming quarter, but you know, 5, 10 years down the road.

Mr. Moore. And you hit the point that I wanted to make with the time I don't have. We have got to be consistent with these players and these companies that are willing to engage in it. And they willing to go the direction we are trying to push them.

We have to be consistent with them, and I am hopeful that we able to get it done this year. Frustrated we didn't last year. But I want to get it done this year. Thank you so much and thank you for being so bold in your first question.

Mr. Ferguson. Thank you.

Chairman Smith of Nebraska. Thank you. I now recognize Ms. Steel from California for 5 minutes.

Mrs. Steel. Thank you, Mr. Chairman. And thank you to all the witnesses today. I represent southern California, and my congressional district is in close proximity to the Ports of Long Beach and Los Angeles, the nation's largest port gateway. These two ports have been on the front line of the supply chain crisis and progressive policies enacted at the state level and now in dealing with work disruption. We must ensure that ports are safe, secure, and ready to compete with other ports around the world.

One area that impacts California is the illegal smuggling of drugs off our coast and our cities. CBP air and marine officers have been asking Congress to double their area of operation from 12 to 24 nautical miles off our nation's coasts, which is consistent with international law and is to target drug smugglers who knowingly operate outside of CBP's 12-mile range of routes like Mexico to California.

Mr. Chairman, I would love to submit the record, this letter Congressman Mike Waltz of Florida for legislation to help target drug smugglers that operate off our coast.

Chairman Smith of Nebraska. Without objection.

Mrs. Steel. Thank you. Ms. Smith, what other tools can Congress give CBP to help target drug traffickers like this, custom water legislation, and deadly fentanyl?

Ms. Smith. Thank you for the question. Unfortunately, it is not my area of expertise, but if you would allow me to submit something for the record, I would appreciate that.

Mrs. Steel. Sure. Any witnesses that can? Yes, please.

Mr. Stumo. We have honestly been talking about De Minimis before, but that is exactly where a lot of this fentanyl is coming through. And I did actually -- my -- Ms. Smith, I did find some of your testimony actually from 2017 where you spoke to the Senate Finance Committee about a raid at New York on the small package blitz, and 43 percent of the packages inspected were noncompliant, but they seized 5 pounds of fentanyl, which I did the calculation is 2.2 million milligrams, which a few milligrams of fentanyl can kill.

So, they found about 800 counterfeit goods and 1,300 other noncompliant imports. But forgive me for quoting you, Ms. Smith, but it was a good quote, a good statement. Transnational -- from Ms. Smith's -- testimony transnational criminal organizations are shipping illicit goods to the United States via small packages due to a perceived lower interdiction risk and less severe consequences if the package is interdicted.

Mrs. Steel. Thank you very much. And actually, I have another question for Ms. Smith. You mentioned the CBP has recommendations to update our customs laws. Are these areas in which CBP may be lacking other nations when it comes to facilitating legitimate trade and modernizing trade enforcement? And how might updates to our customs laws improve CBP coordination with private sector traders?

Ms. Smith. It is a great question. And I think it really calls out the opportunities. I believe that in the U.S., we are a world leader in trade facilitation and trade enforcement, but there is always more that can be done, and I would call out particularly two areas: One, the coordination not only be within Customs and Border Protection, but with the

other government agencies that regulate goods crosser border.

There are 50 other agencies that participate in the U.S. single window automation effort, so 50 agencies that have interest and requirements.

Those requirements are not coordinated, nor is the data that each agency collects, and there is a huge opportunity there to reduce costs and improve coordination. I think the second area that, as a U.S. government, we can do to facilitate and enforce is to recognize the investment and compliance that many U.S. businesses have made and streamline their entry into the United States so that government agencies can focus on the truly bad actors.

Mrs. Steel. Thank you so much.

During the supply chain crisis, I went out to the ports, and we did a tour. And there are so many agencies that they are working separately, and they never worked together. So, one of my bills actually passed under the Coast Guard bill, and they have to work together, so hopefully we can expand that.

Thank you so much, Mr. Chairman. I am not member of the Trade Subcommittee, but you know what, I really enjoy these meetings, and thank you for inviting me.

Chairman Smith of Nebraska. Thank you.

I now recognize for 5 minutes Mr. Arrington from Texas.

Mr. Arrington. Thank you, Mr. Chairman.

We had votes called, and coming in and out of the committee hearing is not ideal. I am sure people have asked similar questions, and I apologize in advance if this is duplicative. But thank you for your time and your input.

I have got one philosophical question for Ms. Vandenberg.

I appreciate the concerns that we all share about forced labor and you in particular in your organization. By the way, I hope they are equally concerned with the human trafficking that is happening at our southern border because in part I think our Nation's

policies have made us complicit, because we have empowered the human traffickers to do that. Now, that is a separate issue. I don't want to be that guy that goes off track here.

But, you know, China cheats. They steal. They manipulate currency. They steal IP. They send spy balloons to collect data from military institutions. They collect data on our children. They are our biggest adversarial threat, and they are the worst human rights violators. And, yet, we work so hard to try to have this reciprocal trade partnership. It just -- I am perplexed by that relationship, just absent -- we hold a different standard for China than we do Cuba and other countries.

We can be indignant about these things that you care about, and I care about when it is another country that has a small market, but if it is big market -- and, listen, I am speaking against some of my own district interests. I have the largest cotton patch in the world. We make more cotton in a 100-mile radius of Lubbock, Texas, around Lubbock, Texas, than any cotton-producing region in the world. And our number one market is China. So, I am talking against this interest for a minute.

I mean, what should our policy be with China? What is our principle? What are our prevailing views? What are the goals we are trying to achieve? Because it is not working. I will just leave it there and let you all respond.

Are you equally perplexed by this? Is it just that complicated of a relationship, Mr. Stumo?

Mr. Stumo. Thank you.

It is like Ground Hog Day. We tried this, you know, in WTO, letting China in, where they were going to -- you know, we were going to trade with them. They were going to be an open, democratic, capitalistic economy. They have gone the different way that has totally been false. We did it with Russia. They were going to be open, democratic, capitalistic. They invaded Crimea and now Ukraine. So it doesn't work.

And with China it is totally nonreciprocal.

We have a country that we like to consume cheap stuff rather than produce stuff. The Germans, the Japanese, the South Koreans, they focus on production there. They don't focus on production somewhere else, with their allies -- and, by the way, allies are, you know, fair weather friends. We have conflicting interests --

Mr. Arrington. Yes.

Mr. Stumo. -- you know, one day versus another. But they focus on there. They dominate their home market and then export. We can't even dominate our home market because we don't produce enough to even fulfill our home market.

Mr. Arrington. Wow.

Mr. Stumo. The trade is the tail; the production is the dog. We have got to focus on the dog.

In China we can't buy Chinese land. We can't buy Chinese stock in Chinese companies. We can't put our Lincoln Institutes into their universities. They put their Confucius Institutes in our universities. They don't allow our de minimus goods in there. And if they do allow somebody in there, we are out in a few days. But they steal our IP, and then they ship it back to us, and we don't even inspect it because it comes back in our de minimus shipments. So -- and we are funding their rise. We are funding their military. We are funding their ability to invade Taiwan. Other countries are not. There is no other country that can absorb the excess production of China like -- there is -- nobody is big enough and stupid enough like we are. The Japanese, the EU, nobody does it. It is us.

Mr. Arrington. That is the best, most comprehensive response to that question since I have been a United States Congressman and been on this committee. The only thing you missed is the fact that we are also underwriting their policies and programs

because we borrow from them and we pay them a tremendous amount of interest, and that interest is going up.

Last point in 8 seconds. Let's see if I can do this. Anybody can take this on. I heard my colleague say it is not authority; it is capacity. How in the world are we going to modernize and allow CBP to do their job to facilitate commerce and protect us from terrorism and other things in terms of their safety and security mission when they are overwhelmed and overrun by an open, chaotic, lawless border?

I will stop there, Mr. Chairman. Would you indulge one of the witnesses to just try to answer that?

Chairman Smith of Nebraska. Yes.

Mr. Arrington. Thank you.

Mr. Kanko. I would just like to make the point that the China issue, of course, is complicated. But how can these decisions even be made when, for example, right now in dozens of airports throughout the United States shipments, cargo shipments coming in from China and elsewhere are coming in blind? We have no idea who -- the public has no idea who is importing these shipments, what is in the boxes.

Until we have complete trade transparency, we have a big blind spot in terms of what is happening with China and what is being imported into the U.S. and by whom.

Mr. Arrington. Thank you.

How about the shipment of synthetic opioids from across the border and the illicit opioid trade?

But anyway, thank you, Mr. Chairman. You have been very indulgent and patient with me. It is because you claim to have the largest agriculture district in America, and I am going to yield back.

Chairman Smith of Nebraska. Data driven.

Mr. Arrington. Data driven. Thank you all.

Chairman Smith of Nebraska. Thank you. The gentleman yields back.

Thank you to our witnesses for your insight, for your expertise. I think it has been a very thoughtful exchange. Appreciate all of the members' participation. These are issues we need to address, and so we look forward to further input. And please be advised that members have 2 weeks to submit written questions to be answered later in writing. Those questions and answers will be made part of the formal hearing record.

With that, the subcommittee stands adjourned.

[Whereupon, at 11:24 a.m., the subcommittee was adjourned.]



## **PUBLIC SUBMISSIONS FOR THE RECORD**

May 24, 2023

The Honorable Jason Smith  
Chairman  
Committee on Ways and Means  
1139 Longworth HOB  
Washington, DC 20515

The Honorable Richard Neal  
Ranking Member  
Committee on Ways and Means  
1129 Longworth HOB  
Washington, DC 20515

The Honorable Adrian Smith  
Chairman  
Subcommittee on Trade  
Committee on Ways and Means  
1139 Longworth HOB  
Washington, DC 20515

The Honorable Earl Blumenauer  
Ranking Member  
Subcommittee on Trade  
Committee on Ways and Means  
1129 Longworth HOB  
Washington, DC 20515

Dear Chairman J. Smith, Ranking Member Neal, Chairman A. Smith, and Ranking Member Blumenauer:

Our organizations respectfully request Committee sign off for House consideration – under suspension of the rules as a stand-alone bill – the Moving Americans Privacy Protection Act (S. 758), as passed by the Senate on March 9, 2023.

The legislation addresses a specific and unique issue and helps protect the sensitive personal data of servicemembers, federal employees, private sector workers, and families who are returning to the United States after living abroad. S. 758 was introduced on a bipartisan basis by Senators Daines, Peters, Stabenow, and Marshall and passed the Senate by voice vote. It has a bipartisan House companion (H.R. 1568) introduced by Representatives Waltz and Pascrell. The legislation is identical to the Moving Americans Privacy Protection Act (115th - H.R. 4403), which in 2018 the Ways & Means Committee reported out by voice vote, followed by House passage under the suspension calendar. The Congressional Budget Office and Joint Tax Committee have determined a “zero” score for the legislation.

Each year, the U.S. military, federal departments, and private sector organizations relocate tens of thousands of Americans back home to the U.S. after posting overseas. Other Americans return home after time abroad for personal reasons. When shipping their personal household goods to the U.S., these individuals must include elements of Personally Identifiable Information (PII) on shipping forms which are made part of vessel manifests. The PII often contains Social Security numbers, Passport numbers, home addresses, and other sensitive data.

Currently U.S. Customs and Border Protection (CBP) is required to make all commercial information from vessel manifests – often capturing the sensitive PII of returning American citizens – available to data brokers who package and resell this data throughout their subscriber network. Without concrete action to protect the PII, normally held under strict security by the U.S. Government, these elements can be exposed, placing Americans at risk of identity theft, financial fraud, and other abuses of their data.

The Moving Americans Privacy Protection Act helps protect Americans from this risk by ensuring PII is removed from manifests prior to CBP providing and selling the commercial manifest information to data brokers. While it does not amend other provisions of the Tariff Act or in any other way modify Customs' authorities or trade policy, it does remove the U.S. Government from making sensitive PII of servicemembers and other Americans available to potential criminals as citizens move back home to the United States.

Given the focused nature of this legislation and increase in identity theft crimes in recent years, we urge the Committee to agree to direct House consideration of the Senate-passed version of the Moving Americans Privacy Protection Act (S. 758) as a stand-alone bill under suspension of the rules.

Thank you for your consideration.

Sincerely,

American Trucking Associations  
International Association of Movers  
Military Officers Association of America  
Senior Executives Association  
Worldwide ERC®



**Statement of the E-Merchants Trade Council, Inc.**

**House Ways and Means Trade Subcommittee Hearing on Modernizing Customs Policies to Protect American Workers and Secure Supply Chains**

**June 8, 2023**

On behalf of the E-Merchants Trade Council, Inc. (EMTC), I am Marianne Rowden, CEO of EMTC and respectfully submit this statement for the record. EMTC appreciates the opportunity to comment concerning the topics covered in the hearing on “Modernizing Customs Policies to Protect American Workers and Secure Supply Chains” held on May 25, 2023.

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC’s advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

As an initial matter, EMTC would like to clarify the record to advise the Subcommittee that the hearing testimony conflated two very distinct issues: e-commerce is not synonymous with *de minimis* and *vice versa* – that is, not all e-commerce shipments are entered under the *de minimis* provision and not all *de minimis* shipments are ordered online. Treating these issues as the same and making the leap that *de minimis* shipments contain goods made with slave labor in violation of the Uyghur Forced Labor Prevention Act (UFLPA) does not provide the clarity necessary for developing good trade policy based on data.

**1. Modernizing Customs Policies**

EMTC applauds the Trade Subcommittee for holding this hearing on “Modernizing Customs Policies to Protect American Workers and Secure Supply Chains.” We recommend that the Trade Subcommittee hold more hearings, roundtable discussions, and town hall meetings throughout the United States to receive testimony, comments and input from micro, small and medium size enterprises (MSMEs) in order to have a full understanding of how these companies are able to serve customers in the United States and in foreign markets by selling their goods through e-commerce marketplace platforms and direct-to-consumer shipments. Any changes to customs policies must be able to accommodate MSMEs who sell their goods directly to consumers as low value shipments.

As part of U.S. Customs and Border Protection’s (CBP) 21<sup>st</sup> Century Customs Framework, which EMTC participated in the Task Force, EMTC submitted a Proposal with a detail redline for specific changes to

Title 6 and Title 19 to modernize the customs statute to accommodate, regulate and facilitate trade for MSMEs engaged in cross-border shipments.<sup>1</sup>

## **2. Consumer Behavior Drives Low Value Shipments**

EMTC believes that the driver of low value shipments imported under 19 U.S.C. § 1321 (i.e., Administrative Exemptions including *de minimis*) is **not** the increase in the threshold from \$200 to \$600 under the Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125, 130 Stat. 122 (February 24, 2016). Based on our industry research, the average value of a shipment imported under *de minimis* is \$50.00.<sup>2</sup>

Rather, EMTC believes that the shift in consumer behavior to online shopping is the bigger driver leading to some increase in low value shipments simply because omni-channel sales have increased at double digits since 2012 while container trade has been flat since the 2008 financial crisis. This trend was exacerbated by the COVID-19 pandemic. Moreover, EMTC suspects that imposition of the section 301 tariffs on goods from China had some impact on a segment of trade that could be de-containerized and sent in low value shipments.

## **3. Complexity is a Trade Barrier**

Congress needs to be sensitive to the fact that since 9/11, the United States has passed approximately ten (10) statutes that impact imports and exports because Congress wanted more transparency and security in the supply chain.<sup>3</sup> These statutes add costs to every company that receives or ships goods cross-border, and they increase the complexity of commercial operations. As a result, MSMEs find that the costs and complexity of complying with all these requirements to be a barrier to engaging in cross-border trade. Small businesses account for approximately 45% of the U.S. GDP and employ nearly 50% of workers according to the Small Business Administration, Office of Advocacy. Therefore, we urge the Trade Subcommittee to proceed with caution on making changes to trade policy that negatively impact MSMEs.

## **4. Manifest Data Should Be Confidential**

Companies submit trade data to CBP, and other federal agencies as required by statute and regulation. These requirements are for admissibility, security, health and safety purposes. As a result, the data that

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<sup>1</sup> See EMTC's 21CCF Proposal at:

[https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20\(11-28-22\).pdf](https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20(11-28-22).pdf).

<sup>2</sup> See EMTC's Letter to Congressional Leaders on the Impact of Import Security and Fairness Act in America COMPETES Act (June 29, 2022 located at:

[https://emtc.org/resources/Documents/EMTC%20Ltr%20to%20Congressional%20Leaders%20re%20Import%20Security%20and%20Fairness%20Act%20\(06-29-22\).pdf](https://emtc.org/resources/Documents/EMTC%20Ltr%20to%20Congressional%20Leaders%20re%20Import%20Security%20and%20Fairness%20Act%20(06-29-22).pdf)

<sup>3</sup> See USA PATRIOT Act of 2001; Homeland Security Act of 2002; Trade Act of 2002, P.L. 107-210, 116 Stat. 933 (August 6, 2002); Enhanced Border Security and Visa Entry Reform Act of 2002; Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Terrorism Risk Insurance Act of 2002; Maritime Transportation Security Act of 2002; USA PATRIOT Improvement and Reauthorization Act of 2005; Katrina Emergency Assistance Act of 2006; Security and Accountability for Every Port Act of 2006; Implementing Recommendations of the 9/11 Commission Act of 2007; Protect America Act of 2007; and the Trade Facilitation and Trade Enforcement Act of 2015, P.L. 114-125, 130 Stat. 122 (February 24, 2016).

companies submit to federal agencies is sensitive trade data that corporations spend a lot of money to generate, protect, and transmit only to authorized parties such as federal agencies.

While EMTC believes that CBP should have access to trade data in the supply chain for security and compliance purposes, we do not support the public release of such data as it can be mis-used for a variety of purposes, such as competitor learning commercial intelligence about suppliers and pricing, theft of cargo by deception which has increased 600% in the U.S. Notwithstanding the goals of UFLPA, public release of trade data is a risk to every company that submits such data to federal agencies.

## **5. CBP Needs a Risk Management Model for Low Value Shipments**

While CBP has had a strategy for dealing with e-commerce overall, EMTC believes that CBP struggled with adopting a risk management model appropriately scaled for the surge in low value shipments that occurred several years ago. CBP's predicament is understandable since it does not have legal or physical jurisdiction over foreign sellers, and thus, does not have a risk profile to segment legitimate from bad actors.

EMTC believes the only way to manage new small traders and incorporate them into the customs regime is to adopt the concept of "systems-based governance." Based on the computing power and economies of scale of the e-commerce industry, EMTC proposes a "systems-based governance" that deploys multiple layers of technology (e.g., Artificial Intelligence, Machine Learning, blockchain) in a holistic system to reduce trade compliance risks. E-commerce companies (marketplace platforms, e-sellers) and their facilitators (trade compliance platforms, logistics companies, brokers, and agents) expend tremendous resources on evolving technology and regulatory costs which need to be integrated into the price of goods and services for small companies and consumers. EMTC has drafted a proposed a statutory change adding 19 U.S.C. § 1484(a)(2)(D):

(D) When an importer of record or an agent authorized to make entry files information pursuant to an electronic data interchange system using a risk-based methodology to assess the admissibility, tariff classification, value and origin of merchandise required under paragraph (a)(1), it shall not be subject to penalty under section 1592. A risk-based methodology shall mean an electronic system interpreting the customs laws and regulations by deploying methods such as natural language processing, knowledge representation, image-based analysis, algorithmic decision-making, and machine learning. The Secretary shall accept a risk-based methodology adopted by an importer of record or an agent provided it received a ruling from U.S. Customs and Border Protection or an opinion letter from a customs expert that the methodology produces consistently correct results.

See EMTC Proposal for 21st Century Customs Framework (November 2022).<sup>4</sup>

## **6. Congress Sets U.S. Trade Policy**

We recognize that Congress has plenary authority to set trade policy and tax rates:

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<sup>4</sup>See EMTC's 21CCF Proposal at:

[https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20\(11-28-22\).pdf](https://emtc.org/resources/EMTC%20Proposal%20for%2021st%20Century%20Customs%20Framework%20(11-28-22).pdf).

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States

U.S. Const. art. I, § 8, cl. 1. Moreover, Congress the authority to decide whether the U.S. should trade with China. Congress should not use U.S. trade policy to select who in the U.S. can trade with China by focusing on narrow issues (e.g., multi-nationals versus MSMEs). Instead, Congress should focus on whether the U.S. can have a trade relationship with China for legitimate trade, and it needs to understand the significant costs associated with trade policy changes, such as eliminating *de minimis* (\$499 Billion), the costs of UFLPA compliance and audits, and the costs associated with shifting the sourcing of goods from countries other than China.

**a. GAO Needs to Advise Congress on the Costs to Process an Entry**

Before it decides whether to change the *de minimis* threshold or to bar shipments from certain countries for admissibility under *de minimis*, Congress should request that the Government Accountability Office (GAO) undertake a study on the actual cost for CBP (and other federal regulatory agencies) to process an entry – regardless of the value of the shipment. After all, the reason that Congress has periodically raised the *de minimis* threshold is that the administrative costs of CBP processing entries for such low value shipments outweigh any duties collected. Again, the trade associations opposing CBP’s proposed rule “Excepting Merchandise Subject to Section 301 Duties from the Customs *De minimis* Exemption” cited this policy extensively:

Whereas the statute identifies clearly the purpose of the *de minimis* exemption as “avoid{ing} expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected,” the proposed rule would result in a substantial increase to the expense and inconvenience to the Government relative to the amount of duties collected. In particular, it is estimated that the Government would be responsible for processing entries for, and collecting import duties on, many hundreds of millions of additional packages per year.<sup>[4]</sup> This would require significant additional administrative expense that is simply not justified by the potential amount of additional duties collected on a per shipment basis for the entries that would be covered by the proposed rule.

\* \* \* \*

In the lead up to TFTEA’s passage, Congress noted specifically that increasing the value of the *de minimis* exemption would “simplify the customs entry process and offer significant benefits to CBP and the trade community” by inter alia “significantly reduc{ing} paperwork burdens for low value shipments.”<sup>[5]</sup> Congress also found that maintaining the *de minimis* exemption level at \$200 was “not practical, especially considering the government resources that would be freed up to focus on high-risk shipments.”<sup>[6]</sup> In light of Congress’s explicit consideration of governmental resources in increasing the *de minimis* threshold level to \$800, it cannot be said that CBP’s proposed exception, which would inarguably increase the Government’s burden, is consistent with the principle of “avoid{ing} expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected.”

See Letter to Secretary of Treasury Steven Mnuchin, OMB Director Russell Vought, and Senior Official Performing the Duties of CBP Commissioner Mark Morgan at 8-9 (footnotes omitted).<sup>5</sup> Moreover, the Senate Finance Committee reiterated Congress' policy to increase *de minimis* as recently as 2020. See Letter from U.S. Senate Committee on Finance to OMB Director Russell Voight dated December 23, 2020.<sup>6</sup>

It is precisely because Congress has only increased the *de minimis* threshold infrequently every few decades that makes the possibility of a change after only six (6) years from passage of TFTEA in 2016 greatly concerning to the trade community, particularly e-commerce marketplace platforms, e-sellers and companies that provide trade and transportation services to e-commerce companies.

Administrative costs for processing low value shipments not only falls on the government, but also affect the private sector as well. These costs are not insignificant. EMTC has calculated that eliminating *de minimis* treatment for shipments from China would add **\$499 Billion** in costs to the private sector.<sup>7</sup>

Based on FY'22 data from CBP, EMTC estimates the additional costs for eliminating *de minimis* for shipments from China would be **\$302 Billion**.<sup>8</sup> Eliminating *de minimis* for all other countries would add billions of dollars in more costs for U.S. e-sellers and consumers. Therefore, Congress should carefully consider these cost/benefit tradeoffs.

**a. Most *De Minimis* shipments enter through the postal service, which will continue to be a compliance challenge**

EMTC would remind the Subcommittee that more shipments are imported under the *de minimis* through the U.S. Postal Service than through commercial carriers. The foreign seller (or shipper) can make the decision to use the local postal service for a variety of reasons, including cheaper costs, fewer documentation requirements, simpler trade rules, and access to global networks through the Universal Postal Union agreements. Lowering the *de minimis* on commercial shipments only further disadvantages the commercial carriers, which offer greater data visibility, security controls, tracking services, and both internal and government partnership initiatives on stopping illicit goods. Therefore, EMTC strongly believes that Congress should not revisit lowering the *de minimis* level, as it would further harm those commercial actors providing the greatest level of support and partnership with the U.S. government in stopping illicit shipments.

## **7. Conclusion**

In summary, EMTC believes that the Trade Subcommittee should carefully consider changes to U.S. trade policy, particularly customs modernization that needs to include new players in the global supply chain.

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<sup>5</sup> See letter at: [IA Multi-association-letter-on-CBP-proposed-de-minimis-rule 12-20 Trade-5a2f4d005fa966b7172a90619c6169c9.pdf](https://www.archiveia.org/5a2f4d005fa966b7172a90619c6169c9.pdf) (archiveia.org).

<sup>6</sup> See letter at: [https://www.finance.senate.gov/imo/media/doc/2020-12-23%20SFC%20Members%20to%20OMB%20\(301%20tariffs%20and%20de%20minimis%20shipments\).pdf](https://www.finance.senate.gov/imo/media/doc/2020-12-23%20SFC%20Members%20to%20OMB%20(301%20tariffs%20and%20de%20minimis%20shipments).pdf).

<sup>7</sup> See EMTC's Letter to Congressional Leaders on the Impact of Import Security and Fairness Act in America COMPETES Act (June 29, 2022, located at: [https://emtc.org/resources/Documents/EMTC%20Ltr%20to%20Congressional%20Leaders%20re%20Import%20Security%20and%20Fairness%20Act%20\(06-29-22\).pdf](https://emtc.org/resources/Documents/EMTC%20Ltr%20to%20Congressional%20Leaders%20re%20Import%20Security%20and%20Fairness%20Act%20(06-29-22).pdf)

<sup>8</sup> Since CBP has not released its final trade statistics (including value and volume) for FY'22, EMTC extrapolated Q1 value and volume data over four quarters assuming that the value and volume of goods released under section 1321 did not fluctuate significantly over the course of FY'22. EMTC's calculations also assume that every package would require a formal entry regardless of mode of transportation if *de minimis* is eliminated.



We believe that a wiser policy would be for Congress to consider how to improve risk management in Customs Modernization legislation to replace the existing transaction-based system with systems-based governance to connect all the entities in the supply chain and clearly define their regulatory responsibilities to CBP.

EMTC appreciates the opportunity to comment on the testimony presented at the hearing on Modernizing Customs Policies to Protect American Workers and Secure Supply Chain, and we are happy to discuss the ideas expressed above in more detail. If there is a significant difference in EMTC's calculations on the potential impact of eliminating *de minimis* based upon CBP's final actual FY'22 trade data, we will advise the Trade Subcommittee.



**COUNTY OF LOS ANGELES**  
**WASHINGTON, D.C. LEGISLATIVE OFFICE**

660 N. Capitol Street, N.W., Suite 430, Washington, D.C. 20001

The County of Los Angeles Statement for the Record  
Submitted to the Committee on Ways and Means Social Security  
Subcommittee Hearing  
The Social Security Administration's Role in Combatting Identity Fraud  
June 1, 2023

Mr. Chairman and Members of the Committee: thank you for holding this important hearing on how the Social Security Administration (SSA) is working to reduce identity fraud and ways to enhance those efforts. Los Angeles County (County) supports the Committee's goal to improve the SSA.

As the Committee moves forward addressing policies to further strengthen the operation of the SSA, the County would respectfully request the opportunity to bring a critical area in need of improvement to the attention of the Committee.

The County has one of the largest county-governed child protective services agencies in the county and is responsible for the safety of over two million children. The County's Department of Children and Family Services (DCFS) serves a diverse population of children and families, including a wide variety of cultural backgrounds, Lesbian, Gay, Bisexual, Transgender, Queer or Questioning (LGBTQ+) clients and children with complex needs, among others.

Under California State law child welfare agencies like DCFS are required to ensure youths in foster care are provided vital documents and access to services and assistance to help them successfully transition to adulthood.

Unfortunately, DCFS has encountered challenges in obtaining social security cards for foster youth due to differences in the SSA's regional enforcement of the agency's document requirement policies. For example, regional SSA offices appear to be using inconsistent application approval procedures, including for what they consider "acceptable documents" for social security card requests for children and foster youth.

In addition, DCFS reports challenges associated with the SSA requirement for multiple original and/or certified documents to verify the citizenship, identity, and age of the social security card applicant. For example, the SSA requires that both the social worker and foster youth's original identification accompany each social security card request.

The County is committed to improving equitable and successful outcomes for transition-age foster youth-. Part of this commitment includes ensuring foster youth have access to identifying documentation such as a social security card, birth certificate, and driver's license, which is critical to transition-age foster youth.

Obtaining a social security card for foster youth provides them with an essential resource they need to attain educational advancement, secure employment, and stable housing, and to further enhance their pathway to independence.

The County would like to work with the Committee to address this issue and to find a solution to the existing challenges within the SSA to obtain social security cards for foster youth.

Thank you for your consideration of this request.

May 25, 2023

The Honorable Jason Smith  
Chair  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Richard Neal  
Ranking Member  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Adrian Smith  
Chair  
Committee on Ways and Means  
Subcommittee on Trade  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Earl Blumenauer  
Ranking Member  
Committee on Ways and Means  
Subcommittee on Trade  
U.S. House of Representatives  
Washington, DC 20515

Dear Chair J. Smith, Ranking Member Neal, Chair A. Smith, and Ranking Member Blumenauer:

On behalf of more than 1.5 million members, the National Association of REALTORS® supports the Moving Americans Privacy Protection Act (HR 1568/S. 758), which has unanimously passed the Senate and been previously reported by the Ways and Means Committee in 2018.

Each year, the U.S. military, federal departments, and private sector organizations relocate tens of thousands of people back home to the U.S. after posting overseas. Others return home after time abroad for many reasons. When shipping their personal household goods to the U.S., these individuals must include elements of Personally Identifiable Information (PII) on shipping forms which are made part of vessel manifests. The PII often contains Social Security numbers, Passport numbers, home addresses, and other sensitive data.

Currently U.S. Customs and Border Protection (CBP) is required to make all commercial information from vessel manifests – often capturing the sensitive PII of returning American citizens – available to data brokers who package and resell this data throughout their subscriber network. Without concrete action to protect the PII, normally held under strict security by the U.S. Government, these elements can be exposed, placing Americans at risk of identity theft, financial fraud, and other abuses of their data.

The Moving Americans Privacy Protection Act helps protect Americans from this risk by ensuring PII is removed from manifests prior to CBP providing and selling the commercial

manifest information to data brokers. While it does not amend other provisions of the Tariff Act or in any other way modify Customs' authorities or trade policy, it would make it more difficult for potential criminals to obtain sensitive PII as servicemembers and citizens move back home to the United States.

REALTORS® support the bill and look forward to working with you as the Committee considers this important legislation in the future. Thank you for your consideration.

Sincerely,



Kenny Parcell  
2023 President, National Association of REALTORS®

cc: The Honorable Michael Waltz  
U.S. House of Representatives

The Honorable Bill Pascrell, Jr.  
U.S. House of Representatives

**Written Testimony of  
National Pork Producers Council**

**Modernizing Customs Policies to  
Protect American Workers and  
Secure Supply Chains**

**House Committee on Ways & Means  
Subcommittee on Trade**

**May 25, 2023**

## **Introduction**

The National Pork Producers Council (NPPC), representing 42 affiliated state associations, works to ensure the U.S. pork industry remains a consistent and responsible supplier of high-quality pork to domestic and international markets. Through public-policy outreach, NPPC fights for reasonable legislation and regulations, develops revenue and market opportunities and protects the livelihoods of America's more than 66,000 pork producers.

The U.S. pork industry is a significant contributor to the economic activity of U.S. agriculture and the broader U.S. economy, marketing more than 140 million hogs annually. Those animals provided farm-level gross cash receipts of more than \$30 billion in 2022.

To produce those hogs, pork producers used roughly 1.6 billion bushels of corn and soybean meal from 433 million bushels of soybeans in 2022. The industry also purchased more than \$1.6 billion in other feed ingredients.

Economists at NPPC and Iowa State University estimated that in 2021 the U.S. pork industry was directly responsible for creating more than 366,000 full-time-equivalent jobs in pork production and generated roughly 122,000 jobs throughout all of agriculture. In addition, the pork sector was responsible for 138,000 jobs in meatpacking and processing and 399,000 jobs in professional services such as financial services, insurance and real estate. In total, the U.S. pork industry supports 610,000 mostly rural jobs in the United States and adds more than \$57 billion to the country's GDP.

Most importantly, U.S pork producers in 2022 provided more than 27 billion pounds of safe, wholesome and nutritious meat protein to consumers worldwide.

Today is a challenging time in the U.S. pork industry. This year, hog producers are losing an average of \$40 per head on each hog marketed. While hog prices have moderated significantly since 2022, current losses are largely because of record-high production costs that have increased by as much as 50 percent in the past year. These losses are putting a pinch on the pork industry,

and this economic reality may force producers to exit the industry and drive consolidation at the farm-level. One bright spot for producers is the pork industry's continuing robust exports.

### **Pork Exports**

Annual exports of U.S. pork have been increasing for the past several years generally because of improving economies and a rising middle class in countries worldwide. Other factors driving those increases include the emergence of hotel and restaurant industries in some nations – particularly as world travel has become relatively easier and more affordable. Additionally, several important U.S. export markets in Southeast Asia, for example, have been battling ASF for the past several years, creating demand for increased pork imports and benefiting U.S. pork producers.

America's pork producers annually export about a quarter of their total production to more than 100 countries. The pork industry exported \$7.68 billion of pork in 2022. Those exports equated to about \$61, or 25 percent, in value for each hog that was marketed last year, supported 155,000 American jobs and contributed more than \$14.5 billion to the U.S. economy, according to Iowa State University economists.

Despite numerous challenges, a strong U.S. dollar, ongoing supply chain issues and trade retaliation from some of its top foreign markets, the U.S. pork industry continues to export a significant amount of pork. In fact, through March of this year, America's pork producers have shipped \$2.0 billion worth of product to foreign destinations compared to about \$1.7 billion for the same period last year, a 14 percent increase.

While strong exports have tempered the pork industry's economic challenges, that would change in an instant if the country were hit with a foreign animal disease (FAD). If an FAD outbreak were to occur in the United States, countries around the globe would shut off American exports immediately, resulting in disruptions to domestic production and significant job losses.

Agriculture is a U.S. critical infrastructure, and it must be protected. In fact, smuggled foods, threats of agro-terrorism and FADs have prompted several presidential directives related to farms



and food. In December 2003, then-President George W. Bush's Homeland Security Presidential Directive 7 described critical infrastructure as "so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety."

### **Foreign Animal Diseases (FADs)**

Pork producers are facing increasing threats from FADs, such as foot-and-mouth disease (FMD) and African swine fever (ASF).

To address FADs, U.S. farmers are collaborating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), state animal health officials and other stakeholders. They work to maintain early detection, prevention and rapid response tools to address any outbreak, including a strong laboratory capacity for surveillance and a stockpile of vaccines to quickly respond to high-consequence diseases.

Currently, the U.S. pork industry is focused on preventing and preparing for ASF. The swine-only viral disease, which is rampant in Southeast Asia, Eastern and Central Europe and Africa, was detected in the Western Hemisphere (the Dominican Republic and Haiti) for the first time in 40 years in mid-2021.

That's why the U.S. pork industry is working with USDA and other federal agencies to help stop the spread of ASF and to prevent the disease from reaching the U.S. mainland. Following its detection in the Dominican Republic and Haiti, the Agriculture Department dedicated \$500 million in Commodity Credit Corporation (CCC) funds to prevent and prepare for ASF.

Additionally, APHIS is reducing the risk of uncontrolled spreading of ASF should an outbreak occur in the United States and get into the feral swine population. The agency has a program to eradicate the wild pigs, which are present in nearly every state and whose number is growing. While APHIS has had significant success in eliminating feral swine, which could spread ASF far and wide, the eradication program is severely underfunded.

An ASF outbreak in the United States, according to Iowa State University economists, would result in a nearly \$80 billion loss to the pork and beef industries, which also would see the loss of 60,000 jobs. Pork prices would drop between 50 and 60 percent and remain low for three years before recovering. (<https://www.card.iastate.edu/products/publications/synopsis/?p=1372>)

NPPC is asking Congress to provide in the 2023 Farm Bill funding of \$75 million over five years for the feral swine eradication program. For addressing FADs, NPPC is requesting funds for:

- **National Animal Vaccine and Veterinary Countermeasures Bank (NAVVCB):** Established in the 2018 Farm Bill, this U.S.-only vaccine bank allows USDA to stockpile animal vaccines and related products to use in the event of an outbreak of FMD or other high-impact FADs. The bank ensures vaccines are available for rapid response in the case of an outbreak. It is also imperative that the NAVVCB is well funded in the event that vaccines for other high-consequence FADs, such as ASF, become viable.
- **National Animal Health Laboratory Network (NAHLN):** The NAHLN is a network of over 60 laboratories that collaborates with the National Veterinary Services Laboratories (NVSL) on disease monitoring. Should an FAD occur, diagnosing and detecting the extent of the outbreak as rapidly as possible would play a key role in responding to a disease and limiting the impact on producers. The laboratory capacity of the NAHLN is critical to ensuring the United States can rapidly and effectively respond to any outbreak. Enhancing animal health diagnostic testing for both endemic and high-consequence pathogens in the nation's livestock and poultry is vital to protecting animal health, public health and the nation's food supply.
- **National Animal Disease Preparedness and Response Program (NADPRP):** This program allows APHIS to collaborate with animal health partners nationwide to implement high-value projects that enhance prevention, preparedness, detection and response to the most damaging and emerging FADs that threaten U.S. agriculture. Cooperative or interagency agreements between APHIS and states, universities, livestock producer organizations, tribal organizations, land-grant universities and other eligible

entities are vital to addressing the risk of animal pests and diseases.

- **National Veterinary Stockpile (NVS):** APHIS's NVS provides veterinary countermeasures (animal vaccines, antivirals or therapeutic products, supplies, equipment and response support services) that states, tribes and territories need to respond to animal disease outbreaks. Depopulation is a key component of any FAD control effort, and adequate euthanasia equipment is critical to its success. Also essential is sampling and vaccination equipment. The NVS should be well-supplied to step in if a large-scale outbreak requires resources beyond what states, tribes or territories may have.

Those programs and the funding for them are critical for responding to any FAD, protecting domestic food production, reopening vital export markets and securing the jobs of American workers.

But the first line of defense against FADs are the 60,000 agents of the Bureau of U.S. Customs and Border Protection (CBP) who man the country's 328 ports of entry.

### **Stopping FADs at U.S. Ports of Entry**

That's because the most likely pathway for an FAD to enter the United States is through agricultural contraband smuggled into the country. In fact, CBP agents in a typical day discover more than 4,600 plants, meat and animal byproducts that need to be quarantined and, in most cases, destroyed.

Exotic pests and foreign animal diseases annually cost the United States about \$140 billion in economic and environmental losses, according to USDA.

CBP agents do a tremendous job of interdicting agricultural contraband, but there aren't enough of them. The agency remains understaffed at many entry points. Because of that, some illegal product slips through, and it only takes one diseased piece of beef or pork to put the country's \$1 trillion-plus agriculture industry at risk.

The principal program for monitoring agricultural imports is the Agricultural Quarantine and Inspection (AQI) program, which is jointly administered by USDA APHIS and CBP. The program is funded through user fees collected by APHIS from international travelers and commercial traffic.

Unfortunately, in September 2022, APHIS lost its 30-year authority to collect a surcharge on the user fees because of a ruling by the U.S. Court of Appeals for the District of Columbia Circuit. The loss of this longstanding authority to collect reserve funds to be used in the event of severe travel disruptions, such as occurred during COVID-19, and the resulting decrease in user fees would destabilize AQI funding and threaten the effectiveness of the program.

NPPC is urging Congress to restore the surcharge authority to APHIS through the 2023 Farm Bill. The organization also is asking that CBP continue to receive annual appropriations, over and above what is funded through the user fees, for hiring additional staff and carrying out its mission.

An important adjunct to CBP's efforts to stop FADs from entering the country is detector dogs. Under the AQI program, CBP agriculture specialists and officers at U.S. ports of entry and international mail facilities work to target, detect and prevent the entry of potential threats before they can do harm. They check containers and trucks for smuggled products, utilize specialized X-ray machines that detect organic materials and employ USDA's "Beagle Brigade," canines trained to sniff out meat and plant materials in international airport passenger areas.

The Secretary of Agriculture has used discretionary authority to operate the National Detector Dog Training Center in Newnan, Ga., where dogs and their CBP handlers are trained. The center, however, still needs appropriations from Congress to fulfill its job of protecting the U.S. pork industry and the rest of American agriculture from foreign animal and plant diseases and pests.

NPPC is urging Congress to include in the 2023 Farm Bill the "Beagle Brigade Act" (H.R. 1480/S. 759), which provides specific congressional authorization – not just administrative permission – and funds for the dog training center.

## **Conclusion**

U.S. Customs and Border Protection plays an indispensable role in protecting America's farmers and ranchers from foreign animal and plant diseases and pests. That protection not only is from the ravages of diseases and pests to domestic agricultural commodities but from the responses – the closing of export markets – of U.S. trading partners.

Given that exports contribute significantly to the bottom line of U.S. pork producers, producers of other farm commodities and U.S. agriculture's balance of trade, the United States cannot afford to have its foreign markets shuttered for any length of time.

Congress and the Biden administration must continue taking action – authorizing and funding programs, including ones that support the Bureau of Customs and Border Protection – to secure the U.S. borders from foreign animal and plant diseases and pests that could jeopardize the livelihoods of the country's more than 3 million farmers and ranchers, the jobs of hundreds of thousands of Americans and the food security of the United States.

**Comments for the Record**  
**United States House of Representatives**  
**Committee on Ways and Means**  
**Subcommittee on Trade**  
**Hearing on Modernizing Customs Policies to**  
**Protect American Workers and Secure Supply Chains**  
**Thursday, May 25, 2023, at 9:00 A.M.**

By Michael G. Bindner  
Center for Fiscal Equity

Chairman Smith and the Ranking Member Blumenauer, thank you for the opportunity to submit these comments for the record. When I checked my Twitter Feed from the Committee, I was pleased that the subject was the Uyghurs and not some partisan exercise.

Sadly, my comments from 2020 still largely apply regarding both China and the U.S. labor markets. The only real change is that China's Belt Road, like the rest of its economy, is collapsing. This affects the leverage the developing world has, but may increase ours - although that is also a danger.

Boycotting the products of slavery worked in fighting the Confederacy. The mass migration of slaves had more of an impact. A boycott of Xinjiang cotton and tomatoes is problematic during a pandemic, but generally it cannot succeed as a stand-alone action. Even though it may hurt in the short run, we should still do it.

To make a boycott work, we cannot do it alone. At minimum, Islamic nations must join in as well and start linking the cause of the Uyghurs to the New Silk Road. The ethnic Turkmen range from modern Turkey to Xinjiang, so a little solidarity on their part could go a long way. If we do go this route, the whole effort to interfere in Iran must end. We cannot be with South Asian Muslims on some things and expect solidarity with them on others.

On the moral front, I am not sure we have room to talk. We hold migrants in stark conditions prior to deportation. If you doubt it, visit Lewisburg Federal Prison. Also stop in the Federal Prison Industries factory while you are there. Visit any food processing plant with large immigrant workforces (send people undercover) and see how many workers were trafficked and how local law enforcement reacts when they decide they want to leave. Examine the plight of sex workers in the United States and see how many of their pimps have arrangements with local police.

Our best weapon is our example. As long as slavery exists in the United States, our moral voice is compromised. Again, I am not saying to ignore this situation. I am saying to All In to really fight slavery. Also, call it slavery. On the same subject, examine the Chinese treatment of peasant workers at their factories. There is a two-level society, and American consumers benefit from this. Our commitment to abolishing slavery cannot live only in the fringes.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

## **Contact Sheet**

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**Committee on Ways and Means**  
**Subcommittee on Trade**  
**Hearing on Modernizing Customs Policies to Protect American Workers and**  
**Secure Supply Chains**  
**Thursday, May 25, 2023, at 9:00 A.M.**

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears:

This testimony is not submitted on behalf of any client, person or organization other than the Center itself, which is so far unfunded by any donations.